

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.395 of 2011

ORDER:

This Civil Revision Petition, under Section 22 of Andhra Pradesh Buildings (Lease, rent and Eviction) Control Act to revise the Order dt. 24.01.2011 in I.A.No.41 of 2010 in R.C.A.No.14 of 2008, whereby the petition filed by the petitioner under Order 18 Rule 17 CPC was dismissed by the Principal Senior Civil Judge-cum- Appellate Court under the Act at Visakhapatnam.

The respondent herein filed RCC No.33 of 2003 against the petitioner herein and the same was dismissed on the ground that the respondent herein is not the owner of the schedule property and it belongs to Sri Venkateswara Swamy Temple and a notice was issued by the Deputy Commissioner, Endowments during pendency of the appeal and therefore, it necessitated the petitioner to file a petition to recall Rw.1 to mark the notice issued by the Deputy Commissioner, Endowments.

The present revision is filed challenging the order dt.24.01.2011 passed by Principal Senior Civil Judge, Visakhapatnam, on the ground that the Notice issued by the Deputy Commissioner of the Endowment is necessary document to prove her contention that she is the owner of the property and landlord to the respondent herein, but the Prl. Senior Civil Judge, Visakhapatnam, did not appreciate the contention in proper perspective and committed an error in dismissing the suit.

A petition under Order 18 Rule 17 CPC can be filed at any stage of the proceedings, but when an appeal is pending, the procedure to be followed to introduce an additional evidence is contemplated under Section 11(2) of the rules framed under the Rent Controller Act. But,

without filing an application under Section 11(2) of the rules framed under the Act for additional evidence, straight away filed an application under Order 18 Rule 17 CPC to recall Rw.1 to mark the documents since the document proposed to be marked is not part of the record. In the absence of any application under Section 11(2) of the rules framed under the Act, the question of recalling Rw.1 does not arise.

In *Vadiraj Naggappa Vernekar (dead) through LRs v Sharadchandra Prabhakar Gogate*¹, the Supreme Court held as follows:

“In the absence of any provision providing for reopening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required under Section 151, subject to its limitations, can be invoked in appropriate cases to reopen the evidence and/or recall witnesses for further examination. If there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under Section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose. (paras 12 and 14)

The need for the court to act in a manner to achieve the ends of justice (subject to the need to comply with the law) does not end when arguments are heard and judgment is reserved. If there is abuse of the process of the court, or if interests of justice require the court to do something or take note of something, the discretion to do those things does not disappear merely because the arguments are heard, either fully or partly. The convention that no application should be entertained once the trial or hearing is concluded and the case is reserved for judgment is a sound rule, but not a straitjacket formula. There can always be exceptions in exceptional or extra-ordinary circumstances, to meet the ends of justice and to prevent abuse of process of court, subject to the limitation recognized with reference to exercise of power under section 151 of the Code. Be that as it may. In this case, the applications were made before the conclusion of the arguments.” (para 15)

This inherent power of the court is not affected by the express power conferred upon the court under Order 18 Rule 17 of the Code to recall any witness to enable the Court to put such question to elicit any clarifications. The power to recall any witness under Order 17 Rule 17 can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is

¹ 2009 (4) SCC 410

discretionary and should be used sparingly in appropriate cases to enable the court to clarify any issue or doubt it may have in regard to the evidence led by the parties by recalling any witness so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions. However, this power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. Order 18 Rule 17 is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. (paras 11, 9 and 10).”

In the later judgment of the Apex Court in **Gayatri v M. Girish**², the Apex Court relied on **Vadiraj Naggappa Vernekar** (1 supra) highlighted the responsibility of the counsel appearing in the suits before the Court while placing reliance on **Noor Mohammed v. Jethanand**³ commenting on the delay caused due to dilatory tactics adopted by the parties and the Court was compelled to say that:

“In a democratic set-up, intrinsic and embedded faith in the adjudicatory system is of seminal and pivotal concern. Delay gradually declines the citizenry faith in the system. It is the faith and faith alone that keeps the system alive. It provides oxygen constantly. Fragmentation of faith has the effect-potentiality to bring in a reasoned verdict from a temperate Judge but does not intend to and, rightly so, to guillotine much of time at the altar of reasons. Timely delivery of justice keeps the faith ingrained and establishes the sustained stability. Access to speedy justice is democracy and such a right is not only the creation of law but also a natural right. This right can be fully ripened by the requisite commitment of all concerned with the system. It cannot be regarded as a facet of Utopianism because such a thought is likely to make the right a mirage losing the centrality of purpose. Therefore, whoever has a role to play in the justice-dispensation system cannot be allowed to remotely conceive of a casual approach.

And, again:

Thus, from the aforesaid, it is clear as day that everyone involved in the system of dispensation of justice has to inspire the confidence of the common man in the effectiveness of the judicial system. Sustenance of faith has to be treated as spinal sans sympathy or indulgence. If someone considers the task to be Herculean, the same has to be performed with solemnity, for faith is the ‘elan vital’ of our system.”

² 2016(3) CLJ (SC) 89

³ (2013) 5 SCC 202

In view of the law declared by the Apex Court referred above, the Court can exercise inherent jurisdiction under Order 18 Rule 17 CPC not as a matter of routine, but in exception circumstances, the Court can exercise such power. But here in this case, no petition under Rule 11 (2) of the Rules framed under the Rent Control Act is filed to receive additional evidence and in the absence of such petition for additional evidence, the question of recalling the witness would not serve any purpose to mark the notice issued by the Deputy Commissioner, Endowments to this petitioner. Thus, the Appellate Court did commit no error in dismissing the petition and therefore, the order passed by the Appellate court is in accordance with law, which does not warrant interference of this Court while exercising power under Section 22 of the Act and such power can be exercised only when there is an illegality or irregularity or perversity in the order under challenge. But here the petitioner without filing any application under Rule 11(2) of the Rules framed under the Act filed this petition and thereby it is not maintainable and consequently, the Order passed by the Appellate court is upheld while negating the relief claimed in the petition.

Accordingly, this Civil Revision Petition is dismissed. However, liberty is given to the petitioner to file appropriate application before the Appellate Court.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

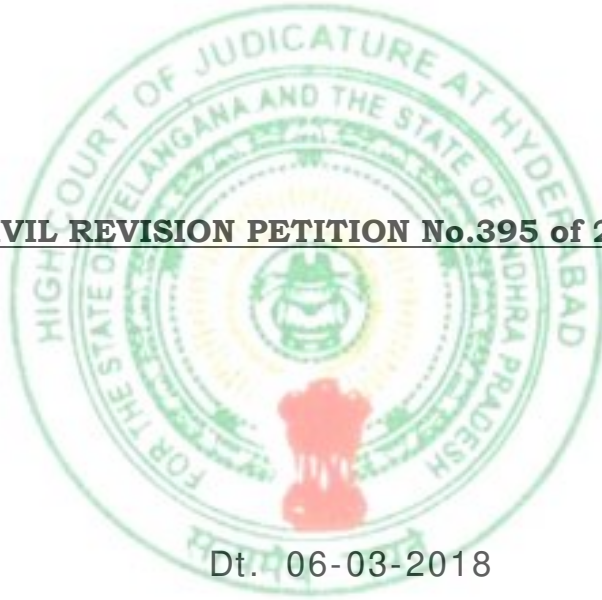
M. SATYANARAYANA MURTHY, J

Date: 06-03-2018
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Dt. 06-03-2018

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