

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.4004 OF 2017

ORDER:

Aggrieved by the order dated 12.07.2017 passed in I.A.No.424 of 2017 in O.S.No.128 of 2007 by the XII Additional Chief Judge, City Civil Court at Secunderabad directing the defendant Nos.4 and 5 to deposit the lease renewal deposits collected from defendant Nos.24, 26 and 29, filed this revision under Article 227 of Constitution of India.

The petitioners herein are respondents/defendant Nos.4 and 5 and the respondent No.1 is the petitioner/plaintiff before the trial Court. Hence, for the sake of convenience, the parties to the revision will be referred hereinafter throughout the Order as arrayed before the trial Court in I.A.No.424 of 2017 in O.S.No.128 of 2017.

The petitioner filed the petition under Section 151 of Code of Civil Procedure (for short "C.P.C.") to direct the defendant Nos.4 and 5 to deposit the lease renewal deposits collected from defendant Nos.24, 26 and 29 alleging that the petitioner, defendant Nos.2 to 6 are brothers and sisters and children of late B.Shankariah, who died intestate leaving behind his wife and children to succeed the property described annexed to the plaint. Thus, the petitioner is one of the legal heirs of deceased and filed suit for partition of "A to G" schedule property during the life time of his mother, defendant No.1 in the main suit. Defendant Nos. 3 to 5 started hatching plans to knock away as much property as possible at the cost of other family members. Hence, he claimed 1/7th share in the property against the mother, brother and

sisters. The defendant No.1/mother of the petitioner died on 02.05.2010, consequent upon the death of mother (defendant No.1), the petitioner is entitled to 1/6th share in the schedule property.

Initially, the petitioner did not implead the tenants in occupation of various parts of the property described in the schedule annexed to the plaint and later filed an application I.A.No.2504 of 2010 to implead the tenants in occupation and the said petition was allowed. Thus, defendant Nos.8 to 29 became parties to the main suit, consequential amendment was carried out. However, the petitioner is entitled to recover his share of lease amount from the tenants in occupation including deposits collected by defendant Nos.4 and 5 from the tenants i.e. defendant Nos.24, 26 and 29, but the defendant Nos.4 and 5 have misappropriated the amount collected for renewal of lease. Therefore, the petitioner sought for direction against the defendant Nos.4 and 5 to deposit the lease renewal deposits collected from defendant Nos.24, 26 and 29.

The trial Court passed the impugned order directing the defendant Nos.4 and 5 (revision petitioners herein) to deposit the amount collected from defendant Nos.24, 26 and 29 towards lease renewal deposits into the Court.

Aggrieved by the said direction, the present revision is filed on various grounds.

The main contention urged before this Court is that the alleged tenants were impleaded and the Court ordered summons to the alleged tenants i.e. defendant Nos.8 to 29 through Court and registered post on payment of process, till date no summons were

served on the proposed defendants, but even before serving summons the proposed defendants, the present petition was filed and the Court ordered the petition without notice to the petitioners herein. The vague direction issued by the Court without disclosing the details of amount collected from defendant Nos.24, 26 and 29 allegedly by the defendant Nos.4 and 5 is erroneous and without serving notice to the defendant Nos.4 and 5 (revision petitioners) is a serious illegality in the order passed by the trial Court. Therefore, the impugned order passed by the Court is liable to be set aside as it is perverse.

Sri P.Shiv Kumar, learned counsel for the petitioners, reiterated the grounds urged in the revision petition, whereas the learned counsel for the respondent No.1, petitioner before the trial Court, supported the order in all respects.

On considering the rival submissions and perusing the material available on record, the point that arises for consideration is as follows:

“Whether the order passed by the Court below without issuing notice to the revision petitioners/defendant Nos.4 and 5 and without serving summons on the proposed alleged tenants in the main suit be sustained? If not, whether the order is liable to be set aside?”

P O I N T:

According to the contention of the petitioners, on filing an application under Section 151 of C.P.C. seeking a direction to deposit lease renewal deposit, no notice was served on the revision petitioners. As per the docket proceedings, the trial Court recorded

on 12.04.2017 that “**notice to other side not given, call on 27.04.2017**”, and subsequent to that date no notice was served on the revision petitioners, but passed cryptic order without recording any reasons. Therefore, the order passed by the Court below without notice to the defendant Nos.4 and 5/revision petitioners is without affording any opportunity to file any counter on service of notice, hence the same is against the principles of natural justice. The order passed by the trial Court is bereft of any reasons except passing an order that “**in view of the nature of the litigation between the parties and on going through material on record**”, the trial Court expressed its opinion that it is appropriate to direct the defendant Nos.4 and 5 to deposit the lease renewal deposits collected from defendant Nos.24, 26 and 29 into Court. The impugned order did not disclose any specific reason for issuing such direction and the trial Court not even advert to the allegations made in the affidavit filed along with the petition, and without serving any notice on the revision petitioners, the impugned order was passed. Therefore, the order is illegal and contrary to the principles of natural justice.

Time and again, the Apex Court and this Court issued certain guidelines to be followed for drafting judgments and highlighted the contents of an order or judgment.

What an order shall contain normally is not specified anywhere but the order must be reasoned one since the judgment or order in its final shape usually contains in addition to formal parts:- (i) A preliminary or introductory part, showing the form of the application upon which it was made, the manner in which and

the place at which, the writ or other originating process was served, the parties appearing any consent, waivers, undertakings or admissions given or made, so placed as to indicate whether they relate to the whole judgment or order or only part of it, and a reference to the evidence upon which the judgment or order, is based and (ii) A substantive or mandatory part, containing the order made by the Court" as has been said in Halsbury's Laws of England (4th Edition, Volume 26 P. 260). Thus, in view of the requirements of an order or judgment referred above, an order pronounced on the bench shall contain the reasoning since the judge speaks with authority by his judgment. The strength of a judgment lies in its reasoning and it should therefore be convincing. Clarity of exposition is always essential. Dignity, convincingness and clarity are exacting requirements but they are subservient to what, after all, is the main object of a judgment, which is not only to do but to seem to do justice. In addition to these cardinal qualities of a good judgment, there are the attributes of style, elegance and happy phrasing which are its embellishments. In the words of Former Chief Justice of the Supreme Court Sabyasachi Mukharji, the requirement of a good judgment is reason. Judgment is of value on the strength of its reasons. The weight of a judgment, its binding character or its persuasive character depends on the presentation and articulation of reasons. Reason, therefore, is the soul and spirit of a good judgment. Equity, justice and good conscience are the hallmarks of judging. One who seeks to rely only on principles of law, and looks only for the decided cases to support the reasons to be given in a case or acts with bias or emotions, loses rationality in deciding the

cases. The blind or strict adherence to the principles of law sometimes carries away a judge and deviates from the objectivity of judging issues brought before him. Justice M.M. Corbett, Former Chief Justice of the Supreme Court of South Africa, recommended a basic structural form for judgment writing, which is as follows:

- "(i) Introduction section;
- (ii) Setting out of the facts;
- (iii) The law and the issues;
- (iv) Applying the law to the facts;
- (v) Determining the relief; including costs; and
- (vi) Finally, the order of the Court."

Keeping in view various principles and observations including the definition of order and judgment, the Apex Court laid down certain guidelines for writing judgments and orders in “**Joint Commissioner of Income Tax, Surat, v. Saheli Leasing and Industries Limited (Civil Appeal No. 4278 of 2010)**” in para No. 7 of the judgment and they are extracted hereunder:

"7. These guidelines are only illustrative in nature, not exhaustive and can further be elaborated looking to the need and requirement of a given case:-

- (a) It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; It should have a co-relation with the applicable law and facts. The ratio decidendi should be clearly spelt out from the judgment/order.
- (b) After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion."

(c) The ultimate finished judgment/order should have sustained chronology, regard being had to the concept that it has readable, continued interest and one does not feel like parting or leaving it in the midway. To elaborate, it should have flow and perfect sequence of events, which would continue to generate interest in the reader.

(d) Appropriate care should be taken not to load it with all legal knowledge on the subject as citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgments should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments have been considered, should be mentioned. While writing judgment, psychology of the reader has also to be borne in mind, for the perception on that score is imperative.

(e) Language should not be rhetoric and should not reflect a contrived effort on the part of the author.

(f) After arguments are concluded, an endeavour should be made to pronounce the judgment at the earliest and in any case not beyond a period of three months. Keeping it pending for long time, sends a wrong signal to the litigants and the society.

(g) It should be avoided to give instances, which are likely to cause public agitation or to a particular society. Nothing should be reflected in the same which may hurt the feelings or emotions of any individual or society."

In view of the principles laid down by the Apex Court, a judgment or an order shall contain the above seven minimum requirements i.e., a to g. In the present case, the order passed by the Court below is bereft of such requirements. Therefore, the order of the Court below is against the requirements under Order XX of C.P.C. When judgment is pronounced without reasoning, it is not a judgment in the eye of law for the reason that the requirement of reasoning either by trial or appellate Court is to convey the mind of the judge while deciding such an issue before the Court. Where the Court has considered the entire evidence on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point

has not been framed by the Appellate Court, there is substantial compliance with the provisions of C.P.C. and the judgment is not in any manner vitiated by the absence of a point of determination. Where there is an honest endeavour on the part of the Court to consider the controversy between the parties and there is proper appraisal of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on both sides is clearly manifest by the perusal of the judgment/order of the Court, it would be a valid judgment or order even though it does not contain the points for determination. The object of the Rule in making it incumbent upon the Court to frame points for determination and to cite reasons for the decision is to focus attention of the Court on the rival contentions which arise for determination and also to provide litigant parties opportunity in understanding the ground upon which the decision is founded with a view to enabling them to know the basis of the decision and if so considered appropriate and so advised, to avail the remedy of revision or appeal permitted by CP.C. From a bare reading of the principle laid down in the above judgment, the requirement of recording of reasons is only to show that the Court has focused concentration on rival contentions and to provide litigant parties an opportunity of understanding the ground upon which the decision is founded. Even if it is an order under the provisions of the Act, still these basic requirements cannot be ignored by Courts. In such case, a judge is required to apply his mind and give focused consideration to rival considerations raised by both parties but in this case the Appellate Court repeated the finding recorded by the Rent Controller without independent consideration

and appreciating evidence on record. Such order or judgment without independent consideration is not legally sustainable since Courts do not act blindly or mechanically and pass orders or judgments. Courts ought to be cautious and only on being satisfied that there is no fact which needs to be proved despite being in admission, should proceed to pass judgments. Thus, in the absence of application of mind in arriving at such conclusion without considering the contentions independently is nothing but a cryptic Order. The need for recording of reasons is greater in a case where the order is passed at the original stage, a decision without reasons is like grass without root, the requirement to record reasons is one of the principles of natural justice as well and where a statute required recording of reasons in support of the order, it must be done by the authorities concerned as held by the Apex Court in S.M. Mukerji v. Union of India [1990 CrI.L.J.2148]. The increasing institution of cases in all Courts in India and the resultant burden upon the Courts has invited attention of all concerned in the justice administration system. Despite heavy quantum of cases in the Courts, in the view of Courts, it would neither be permissible nor possible to state as principle of law that while exercising power of judicial review on administrative action and more particularly judgment of Courts in appeal before in High Court, providing of reasons can never be dispensed with. The doctrine of audi alteram partem has three basic essentials, firstly; a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard, secondly; the concerned authority should follow fair and transparent procedure and lastly; the

authority concerned must apply its mind and dispose of the matters by reasoned order or speaking order. This has been uniformly applied by Courts in India and abroad [vide Assistant Commissioner, Commercial Tax v. M/s. Shukla (2010) 4 SCC 785]. Here in this case, the judgment is only repetition of the findings recorded by the Court below. When the Appellate Court passed such judgment without considering the requirements contemplated under C.P.C., such judgment cannot be sustained. Even otherwise, it is the duty of the Court to state its reasons on each issue by due application of mind, clarity of reasoning and focused consideration; a slipshod consideration or cryptic order or decree without due reflection on issues raised in the matter may render such decree unsustainable and therefore hasty adjudication must be avoided and each and every matter that comes to the Court must be examined with seriousness it deserves as held by the Supreme Court in Board of Trustees of Martyr Memorial Trust and another v. Union of India and another [2012 (10) SCC 734]. From the principles laid down in the above judgments, the judgment of the Appellate Court is nothing but a slipshod one without focused consideration on the issues raised by both parties. In such case, the same cannot be sustained.

This Court reiterated the same principles in “***Leela Enterprises, Rep. by its Proprietor K.Surender and another v. Smt.Kamar Sultana @ Kamer Hassan***¹”

In view of the principles laid down by the Apex Court and this Court, the order passed by the Court below is not in

¹ 2017 (5) ALT 75

accordance with the basic requirement of order i.e. recording of reasons. Therefore, the impugned order is liable to be set aside on the sole ground that the order is not a reasoned one and since the notice was not served on the defendant Nos.4 and 5/revision petitioners herein, it is against the principles of natural justice.

Therefore, the impugned order is hereby set aside while remanding the matter to the trial Court for passing reasoned order afresh in accordance with law considering all questions raised by the petitioners herein.

In the result, the civil revision petition is allowed, setting aside the order dated 12.07.2017 passed in I.A.No.424 of 2017 in O.S.No.128 of 2007 by the XII Additional Chief Judge, City Civil Court, Secunderabad while remanding the matter to the trial Court with a direction to consider the contentions of the petitioners herein and pass appropriate reasoned order afresh in accordance with law, within two (2) months from the date of receipt of a copy of this order. No costs.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

23.02.2018
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