

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.5023 OF 2018

ORDER:

This civil revision petition is filed questioning the order in I.A.No.1895 of 2018 in O.S.No.258 of 2009 dated 23.07.2018 passed by the III Additional Junior Civil Judge, Kadapa District, allowing the application under Order VIII Rule 14(1) r/w Section 151 C.P.C, to receive the documents set out in the list annexed to the petition.

O.S.No.258 of 2009 was filed by the petitioner herein for grant of permanent injunction against the defendants. When the suit was posted for arguments before the Trial Court, the Trial Court noticed that issues were not framed in counter claim filed by the petitioner/defendant and therefore, the Trial Court framed necessary additional issues and posted the suit for adducing additional evidence by both sides, if any. At this stage, after framing on the additional issues, I.A.No.1895 of 2018 was filed for reopening the evidence and requested to receive the petition schedule documents set out in the list as additional evidence.

The respondent denied material allegations *inter alia* contending that this petitioner earlier filed I.A.No.421 of 2017 to summon the Sub-registrar, Kadapa for production of the documents and the same was allowed on 13.10.2017 by the Principal Junior Civil Judge, Kadapa. Against the said order, the

petitioner herein/respondent preferred a revision before this Court in C.R.P.No.7135 of 2017 and this Court allowed the civil revision petition, setting-aside the orders of Principal Junior Civil Judge, Kadapa in I.A.No.421 of 2017 dated 13.10.2017. Therefore, the petition is hit by Principle of Resjudicata under Section 11 of C.P.C and prayed to dismiss the petition.

The reason for filing I.A.No.895 of 2018 before the Trial Court by the respondents herein is, framing of additional issue on the counter claim, since, no issue was framed initially. When an additional issue was framed by exercising power under Order XIV Rule 5 C.P.C, the parties shall be given the opportunity to adduce evidence. Therefore, the Trial Court afforded an opportunity to both the parties to adduce evidence, if they desired. At that stage, I.A.No.1895 of 2018 was filed to receive documents set-out in the list under Order VIII Rule 1-A C.P.C.

The respondents herein/petitioners also filed I.A.No.421 of 2017 before the Principal Junior Civil Judge, Kadapa to summon the Sub-registrar, Kadapa for production of the documents. But, the orders passed by the Principal Junior Civil Judge, Kadapa in I.A.No.421 of 2017 were set-aside in C.R.P.No.7135 of 2017. The order passed in I.A.No.421 of 2017 and its reversal by the High Court in C.R.P.No.7135 of 2017 will have no bearing on the issue and at best, the petitioner herein has to prove that there was sufficient cause for delay in filing the documents.

In fact, Order VIII Rule 1-A C.P.C mandates filing of document along with written statement and inclusion of the document relied upon in the list of documents annexed to the written statement. But, the power to receive document was not taken away in view of Clause (3) of Order VIII Rule 1 C.P.C and the Court, if, satisfied that there is reasonable cause to receive documents set out in the list, then the Court can receive such documents filed along with the petition under Order VIII Rule 1-A C.P.C. But, here, the reason assigned for receiving the documents is that, the Trial Court did not frame issue on the counter claim filed by the respondent and therefore, they are not required to adduce any evidence on the counter claim.

When additional issue was framed by exercising power under Order XIV Rule 5 C.P.C, the parties shall be given an opportunity to adduce evidence, both oral and documentary if any. Therefore, the Trial Court afforded an opportunity to both the petitioners and respondent therein and in the said process, I.A.No.1895 of 2018 is filed to receive the documents set-out in the list as evidence on behalf of this petitioner.

In the peculiar facts and circumstances of the case, due to failure of the Trial Court to frame additional issue on the counter claim, the Court received the documents set-out in the list by exercising power under Order VIII Rule 1-A Clause (3) C.P.C.

One of the contentions raised before this Court is that, since the earlier application in I.A.No.421 of 2017 was allowed by

Principal Junior Civil Judge, Kadapa dated 13.10.2017 and the same was set-aside by this Court in C.R.P.No.7135 of 2017, it operates as resjudicata. The earlier application in I.A.No.421 of 2017 was filed to summon the Sub-registrar, Kadapa for production of the documents under Order VI Rule 1 C.P.C. But, I.A.No.1895 of 2018 is filed under Order VIII Rule 1-A C.P.C. Therefore, the order passed by this Court in C.R.P.No.7135 of 2017 will not operate as resjudicata. Hence, this contention of the learned counsel for the petitioner is without any substance and the same is hereby rejected, as, it is not a fit case to interfere with the order passed by the Trial Court by exercising power under Article 227 of the Constitution of India, which is limited.

Article 227 of Constitution of India deals with power of superintendence by the High Court over all Subordinate Courts and Tribunals. The power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only, but includes the power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law, rather power under this Article is wider than that of Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction and such power can also be exercised suo motu. It is a well settled principle that the High Court can exercise supervisory power under Article 227 of Constitution of India, as held by the Apex Court in **State (N.C.T.**

Of Delhi) v. Navjot Sandhu@ Afsan Guru¹ that under Article 227 of Constitution of India the High Court can interfere with the directions of the Subordinate Courts.

In view of the law laid down by the Apex Court, this Court cannot exercise its power under Article 227 of the Constitution of India though the order is wrong, since the power can be exercised only to keep the subordinate Courts and Tribunals within its bounds.

This Court while exercising power under Article 227 can exercise its discretion to interfere in the following circumstances:

- a) When the inferior court assumes jurisdiction erroneously in excess of power.
- b) When refused to exercise jurisdiction.
- c) When found an error of law apparent on the face of record.
- d) Violated principles of natural justice.
- e) Arbitrary or capricious exercise of authority or discretion.
- f) Arriving at a finding which is perverse or based on no material.
- g) A patent or flagrant error in procedure.
- h) Order resulting in manifest injustice.
- i) Error both on facts and law or even otherwise.

In the present facts of the case, none of the grounds permits the Court to exercise power under Article 227 of the Constitution of India. Therefore, in the absence of any manifest error, it is difficult to reverse the order passed by the Trial Court. In view of my foregoing discussion, I find no reason to set-aside the order passed by the Court below.

¹ (2005) 11 SCC 600

In the result, the civil revision petition is dismissed.

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

JUSTICE M. SATYANARAYANA MURTHY

Date: 07.09.2018

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