

**THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

**CIVIL REVISION PETITION No. 5538 of 2018**

**ORDER:**

This Civil Revision Petition by the 1<sup>st</sup> respondent/plaintiff, under Article 227 of the Constitution of India, is directed against the order, dated 03.08.2018, of the learned Senior Civil Judge, Srikalahasthi, passed in I.A.No.93 of 2013 in O.S.No.15 of 2013.

2. I have heard the submissions of Sri N.M. Krishnaiah, learned counsel appearing for the revision petitioner/plaintiff ('plaintiff', for brevity), and of Sri A. Chandraiah Naidu, learned counsel appearing for the respondents 1 & 2/defendants 5 and 6 ('defendants 5 and 6', for brevity). I have perused the material record.

3. The facts, which are necessary to be stated as a preface to this order, in brief, are as follows:

'The plaintiff's suit for specific performance is being resisted by the defendants 5 and 6. After conclusion of the evidence on the side of the plaintiff, the defendants 5 and 6 filed the interlocutory application for granting leave to file the petition listed documents and receive the same on file by condoning the delay in filing the same. The said application was resisted by the plaintiff. However, by the orders impugned in this revision, the trial Court allowed the said petition on payment of costs of Rs.500/- *inter alia* observing that the relevancy and the weight to be attached to the documentary evidence will be considered at an appropriate later stage.'

4. Though learned counsel for the plaintiff is unable to state as to whether the costs are paid and received, learned counsel for the defendants 5

and 6 stated that as per the instructions received by him, costs are paid and received.

5. Be that as it may, the case of the defendants 5 and 6, in support of their request for receiving the documents on file after granting necessary leave, in brief, is this:

‘Except the documents 8 to 10 mentioned in the list, all the documents were entrusted to the former counsel, who appeared on behalf of the defendants 5 and 6, for being filed into the Court along with the written statement. The defendants 5 and 6 were under the impression that the said documents were already filed into the Court. However, they found that they were not filed into Court, as they were misplaced. As far as the documents 8 to 10 are concerned, the same were secured by the defendants 5 & 6 recently. Hence, the said documents could not be filed within time. All the documents are material documents to prove the defence of the defendants 5 and 6 and to disprove the case of the plaintiff. Hence, the present petition is filed.’

6. Per contra, the case of the plaintiff is this:

‘The defendants 5 and 6 are not diligent in prosecuting their defence. The 6<sup>th</sup> defendant is a Senior Advocate. He knows the procedure that is to be followed in the matter. The allegation that the defendants 5 and 6 were under the impression that their documents are filed into the Court is baseless. The said explanation is not a *bona fide* explanation for granting leave to file the documents at this stage. Had the documents been filed along with the written statement of defendants 5 and 6, PW1 would have had an opportunity to speak about the said documents in his evidence. For non-filing of the said documents, PW1 lost the said opportunity. Documents 1 to 3 are old certified

copies standing in the name of earlier Advocate who conducted the proceedings on behalf of the defendants 5 and 6. The documents 4 to 6 are admittedly in possession of the 6<sup>th</sup> defendant and they were entrusted to the counsel. However, they were not filed along with the written statement. So far as the documents 8 to 10, there is no explanation as to how the defendants 5 & 6 came into possession of the said documents recently. Since the said documents are not produced from proper custody, they cannot be received on file. The relevancy of the documents is not explained. Some of the documents like wedding cards can be got printed at any time. The documents are filed at a highly belated stage. Hence, the petition is liable to be dismissed.’

7. Learned counsel for the revision petitioner/plaintiff, while reiterating the case of the plaintiff, submitted that unless the basis for filing the documents belatedly is stated and a valid reason is assigned for not filing them along with the written statement and an explanation is offered that despite due diligence, the defendants 5 & 6 could not trace out and produce the documents at the relevant time, the defendants 5 & 6 are not entitled to seek leave of the Court to file the documents. In support of the case of the plaintiff, which is stated supra, he placed reliance on the following two decisions: (1) **R. Saraswathi v. P. Rajamanikyam @ Veeran**<sup>1</sup>; and, (2) **Managing Director, APSRTC, Hyderabad v. P. V. Surya Narayana**<sup>2</sup> and strongly contended that the plaintiff has got good case in the revision.

8. Learned counsel for the defendants 5 & 6, while reiterating the pleaded case of the defendants 5 & 6, which is already stated supra, submitted that except document no.8, which is a wedding card, most of the documents are certified copies of public documents viz., the pleadings, amended pleadings,

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<sup>1</sup> 2015 (5) ALT 527

<sup>2</sup> 2017 (4) ALD 733

award, judgment & EP in the previous proceedings, the birth certificates, pattadar pass books and title deed books; one document is a original registered sale deed and the others are notices exchanged; and, therefore, the authenticity of the documents need not be doubted, and that the trial Court, having considered the explanation offered, exercised its discretion and granted leave and, therefore, such well considered order brooks no interference.

9. I have given earnest consideration to the facts and submissions.

10. Admittedly, the documents are filed after closure of the evidence on the side of the plaintiff. The documents, which the defendants 5 and 6 request the Court to receive on file after granting necessary leave, are as follows:

“1. Certified copy decree in O.S.No.358/2000 dated 19.03.2001 filed by M. Munaswamy Reddy against one Mallikarjuna.

2. Certified copy judgment in O.S.No.358/2000 dated 19-03-2001 filed by M. Munaswamy Reddy against one Mallikarjuna.

3. Certified copy of E.P.No.322/2002 in O.S.No.358/2000 filed on behalf of M. Munaswamy Reddy against M. Mallikarjuna on the file of P.J.C.J Court, Srikalahasti.

4. Original Registered Sale Deed dt.17-02-2005 in E.P. No.322/2002 in O.S.No.358/2000 executed by P.J.C.J Court, Srikalahasti.

5. Pattadar pass book issued in the name of M. Munaswamy Reddy pertaining to the suit schedule land (Original).

6. Pattadar title deed pass book issued in the name of M. Munaswamy Reddy pertaining to the suit schedule land (Original).

7. Copy of reply notice dt.25-03-2013 issued on behalf of defendants 5 & 6 to the notice dated 12-11-2012 issued on behalf of P. Chayapathi (plaintiff).

8. Wedding Card of 3<sup>rd</sup> defendant Sandya dated 23-08-2000.

9. Birth Certificate dt.27-02-2016 of male child born on 15-12-2004 to 3<sup>rd</sup> defendant.

10. Birth Certificate dt.27-02-2016 of female child by born on 24-10-2007 to D-3 Sandya by name 'Nagadharani'.

11. Certified copy of original plaint in O.S.No.19/1998 filed by M. Rajaiah against M. Siva Kumar on the file of Senior Civil Judge Court, Srikalahasti dated 12-06-1998.

12. Certified copy of amended plaint in O.S.No.19/1998 dated 14-02-2001.

13. Certified copy of amended plaint in O.S.No.19/1998 dated 29-11-2001.

14. Certified copy of written statement filed by M. Siva Kumar in O.S.No.19/1998 on 26-10-1998.

15. Certified copy of Award in O.S.No.19/1998 dated 22-06-2002.

16. Genealogy Tree of Matam Mallikarjuna family.”

11. Dealing now with the decisions cited, it is to be noted that in the 1<sup>st</sup> decision cited, this Court noted that some of the documents were unregistered documents and that though the defendants therein were in possession of the said documents, they were not filed along with the written statement and no explanation was offered for not filing the documents earlier. In the 2<sup>nd</sup> decision cited, the petitioners therein did not state in their affidavit the reasons for not filing the documents at the relevant time. Thus, both the decisions were rendered on facts which are peculiar to the said cases. As per the settled law, when the documents are public documents and/or when the documents are of such a nature that their authenticity need not be doubted, all such documents will be received on file more particularly when the documents will be helpful in deciding the real issues in controversy and in effectively adjudicating the *lis* and giving it a quietus. It is settled law that requests for grant of leave to file documents by either of the parties would generally be considered on the facts peculiar to the case on hand. In **Lukka Srinivasa Rao @ Stateswomen** [(2015) 6 ALD 38] it was held that procedure is handmaid of justice and that procedural & technical hurdles shall not come in the way of the Court for doing substantial justice. It is also submitted that this

case is not a case where if the documents are received serious prejudice would be caused to the adverse party and that in contrast this is a case where the Court should lean towards doing substantial justice rather than relying on procedural and technical violations. Further, a plausible explanation was offered by stating that except the documents 8 to 10, all the documents were entrusted to the former counsel, but he did not file the same, as the same were misplaced. It is to be noted that the other three documents are - a wedding card of the 3<sup>rd</sup> defendant and two birth certificates of her children. When the Court is of the considered view that if these documents are also permitted to be placed on record, the Court below would be in a better position to effectively adjudicate the *lis* and that such a course would sub-serve the ends of justice, the Court will receive the documents and would direct the Court below to consider their admissibility and probative value at a later stage. Having regard to the peculiar facts and circumstances, this Court holds that the defendants 5 & 6 should be given sufficient opportunity to substantiate their defence. In the well considered view of this Court, at the time of considering requests to grant necessary leave and receive documents on file, the Court will only consider the aspect of delay in filing the documents and the further short question as to whether or not any case is made out for granting leave; but, the Court will not consider the probative value of the documents filed along with the petition. When such is the settled position and, when the documents, which are sought to be produced, are being produced before the Court below at the stage of trial, normally they would be received and an opportunity would be given to prove them and also to adduce rebuttal evidence, if any.

12. On the above analysis, this Court finds that the trial Court is justified in passing the order, which is impugned, and that the said order does not warrant interference.

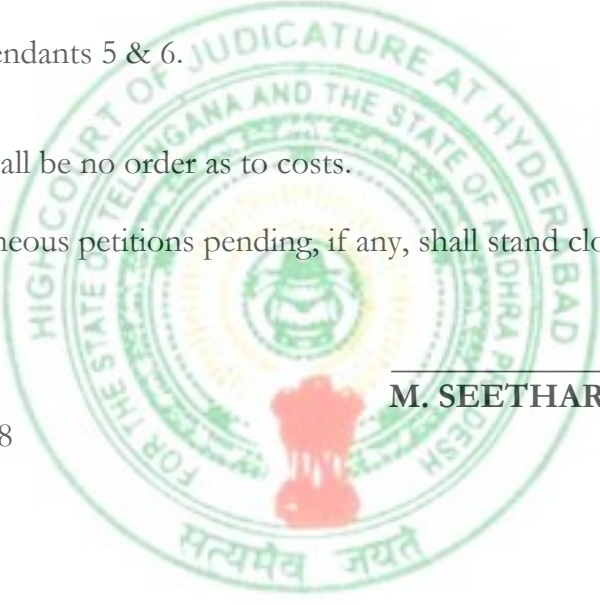
13. In the result, the revision petition is dismissed.

Since the documents are received on file subject to proof, admissibility and relevancy, however, after closure of the evidence on the side of the plaintiff, it is needless to state that the trial Court shall grant an opportunity to the plaintiff to have the evidence on his side reopened and adduce any further evidence, if the plaintiff so desires, on the documents now permitted to be filed by the defendants 5 & 6.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

Date: 14.12.2018  
v v

M. SEETHARAMA MURTI, J