

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.4626 OF 2017

ORDER:

This revision petition is preferred under Article 227 of Constitution of India challenging the order dated 21.08.2017 in I.A.No.398 of 2017 in O.S.No.336 of 2009 passed by the Principal Senior Civil Judge, at Mancherial, whereby the petition filed under Order XVIII, Rule 3-A read with Section 151 of Code of Civil Procedure (for short, hereinafter, referred to as "C.P.C.") was dismissed.

The revision petitioners are the petitioners/defendant Nos.16, 17 and 18 before the trial Court, they filed petition under Order XVIII Rule 3-A read with Section 151 of C.P.C. to permit them to get themselves examined as witnesses at a later stage after completion of the examination of their witnesses in the suit on the ground that the persons proposed to be examined are independent witnesses and connected to all such documents in proof of the events taken place for the past 25 years in respect of the subject matter and most of the witnesses whom they are intending to examine are aged, ailing persons confined to bed and in case, if they permitted to avail the option to examine such witnesses at an earliest possible time, lot of ambiguity and clouds created by the adverse party will be clarified in depth, as such they are material and relevant witnesses, whose examination at an early stage i.e. before examining themselves as witnesses in the suit is required to meet the ends of justice.

Respondents filed counter denying material allegations *inter alia* contending that there are no grounds to grant leave to examine witnesses before examination of petitioners and relied on a judgment of this Court rendered in “**Bonthu Venkataramana v. Patrevu Samba Murthy**¹” and prayed to dismiss the petition.

The trial Court dismissed the petition recording various reasons that there are no cogent and sufficient reasons to permit the petitioners to examine as witnesses at a later stage after completion of the examination of their witnesses in the suit.

Aggrieved by the said order, the present revision is filed under Article 227 of Constitution of India on various grounds mainly contending that the order of the trial Court is bereft of any reasons and the intention of the petitioners was not considered while deciding application filed under Order XVIII Rule 3-A read with Section 151 of C.P.C. and the reasoning recorded by the trial Court is against the law and prayed to set aside the order passed by the trial Court.

During hearing, learned counsel for the petitioners would contend that negating leave to examine the witnesses first while permitting the petitioners to examine themselves later is not inconsonance with the law declared by the Court and placed reliance on a judgment of this Court rendered in “**Garigipati Kesava Rao v. Prathipati Srilakshmi**²” to contend that if an objection is raised regarding examination of witnesses first while permitting the parties to be examined later, the Court has to consider and record a specific finding. But in the present facts of

¹ 2004 (4) ALT 230

² AIR 2006 AP 184

the case, the Court did not record any specific reason. Therefore, when the petitioners intend to examine the witnesses first before examining the parties, the permission is required to be granted and it is not the case of the respondent that the petitioners intend to fill-up the lacunas by examining themselves at later stage and in the absence of such contention, the dismissal of the petition is illegal and prayed to set aside the same.

Learned counsel for the respondents contended that if the Court comes to conclusion that the examination of witnesses first before examining the parties is intended to fill-up the lacunas in the evidence, permission cannot be granted to examine the witnesses first by exercising power under Order XVIII Rule 3-A read with Section 151 of C.P.C. and placed reliance on “**Devarapalli Pattabhi Ramaiah v. Davuluri Lakshmi Prasanna**”³ and “**John Susheel Kale v. S.Devarajulu**”⁴ in support of his contentions and prayed to dismiss the petition.

Article 227 deals with power of superintendence by the High Court over 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*.

³ 1997 (6) ALT 475 (D.B.)

⁴ 2011 (5) ALT 439

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, through Special Cell, New Delhi v. Navjot Sandhu @ Afshan Guru⁵**”, 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.

In the present case on hand, the trial Court recorded a reasoning that the petitioners did not make out a specific case, but as per the judgment relied on Counsel for the respondents in “**Devarapalli Pattabhi Ramaiah v. Davuluri Lakshmi Prasanna**” (referred supra) the only requirement either to allow or dismiss the petition is that the Court has to examine the material on record whether such permission was intended to fill-up the lacunas, the Division Bench referring to Law Commission report, held as follows:

“With great respect we must say that we are not able to agree with the view taken by the learned single Judge, Order 1 Rule 3 of the Code of Civil Procedure prescribes as to who may be joined as defendants but nowhere the Code of Civil Procedure prescribes as to in what order the defendants ought to be arrayed. That being the position it is open to the plaintiff to choose the order of the array of the defendants. If the logic of the learned single Judge is to be accepted, the examination of the defendants in the order as they are shown in the plaint would be a matter dependent not on any principle of law or logic but purely on a chance of the choice of the plaintiff. We are not able to believe that the law makers intended such a result. Rule 3A of the Code of Civil Procedure was introduced by Act 104 of

⁵ 2003 (6) SCC 641

1976 into the Code of Civil Procedure. Pursuant to the recommendations of the Law Commission in the 54th report with an intention to prevent the notorious practice indulged in by litigants in examining other witnesses first and later covering up the gaps by the examination of the parties themselves later, to substantiate their case. If that is the mischief sought to be remedied by the amended Rule 3A of Order 18 of the Code of Civil Procedure, the order of the examination of such of the defendants who wish to examine themselves as witnesses in support of their defence cannot be left to the choice of the plaintiff. The defendants are entitled to put forward the best defence available to them. In putting forward such defence it is for them to decide as to which one of the defendants should be examined first as a witness to effectively defend the case. That right cannot be made subject to the arbitrary or even a designed choice of the plaintiff. No doubt as against other witnesses whom the defendants wish to examine in support of their case the defendants must get themselves examined first unless the Court permits otherwise. At any rate, this judgment in our view does not advance the case of the petitioner.”

This view was reiterated by the Single Judge of this Court in “**John Susheel Kale v. S.Devarajulu**” (referred supra) extracting the specific principle laid down in the Judgment. Therefore, the law is consistent that it is the duty of the Court to examine while granting leave under Order XVIII Rule 3-A of C.P.C. whether the party to the suit is going to fill-up gaps in the evidence or not. If the Court finds that the petitioners intend to fill-up gaps in the evidence, the Court can reject such relief.

The order under challenge is bereft of any such reasoning as laid down by the Division Bench of this Court in “**Devarapalli Pattabhi Ramaiah v. Davuluri Lakshmi Prasanna**” (referred supra). Even if the judgment of Single Judge of this Court rendered in “**John Susheel Kale v. S.Devarajulu**” (referred supra) is taken into consideration, the only requirement is that the Court has to consider the objections, if any, and record reasons whether the leave granted by the Court under Order XVIII Rule 3-A of C.P.C.

can be taken advantage by the petitioners to fill-up lacunas in the evidence.

In any view of the matter, the law declared by the Division Bench of this Court in “**Devarapalli Pattabhi Ramaiah v. Davuluri Lakshmi Prasanna**” (referred supra) and Single Judge of this Court in “**John Susheel Kale v. S.Devarajulu**” (referred supra) is consistent that the basic requirement is whether the leave granted by the Court under Order XVIII Rule 3-A of C.P.C. can be taken advantage to fill-up gaps or not. But the order of the trial Court is silent with regard to the requirement, and the trial Court dismiss the petition on the ground that the petitioners did not make out any case to accord such permission under Order XVIII Rule 3-A of C.P.C.

Therefore, the order passed by the trial Court is contrary to the law declared by the Division Bench of this Court.

Learned counsel for the respondents requested this Court to record reasons and pass appropriate order.

This Court while exercising power under Article 227 of Constitution of India cannot substitute its opinion since the power under Article 227 of Constitution of India can be used to keep the subordinate Courts within their jurisdictional limits. Therefore, I am not inclined to examine the matter in detail since this Court is not a trial Court and the Trial Judge is best Judge to decide such aspects. Therefore, the order passed by the trial Court is hereby set aside while remanding the matter to the trial Court to decide the matter afresh keeping in mind the law declared by the Division Bench of this Court in “**Devarapalli Pattabhi Ramaiah v. Davuluri Lakshmi Prasanna**” (referred supra).

In the result, the civil revision petition is allowed setting aside the order dated 21.08.2017 in I.A.No.398 of 2017 in O.S.No.336 of 2009 passed by the Principal Senior Civil Judge, at Mancherial and the matter is remitted back to the trial Court for fresh disposal in accordance with law, keeping in mind the law declared by the Division Bench of this Court in “**Devarapalli Pattabhi Ramaiah v. Davuluri Lakshmi Prasanna**” (referred supra), within a period of one month from the date of receipt of a copy of this order. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

23.01.2018
Ksp

JUSTICE M. SATYANARAYANA MURTHY

