

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.5989 OF 2018

ORDER:

The present Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner - defendant No.4, challenging the order, dated 16.08.2018, passed in I.A. No.157 of 2018 in O.S. No.25 of 2013, by the Junior Civil Judge at Narayanpet, whereby dismissing the petition filed under Order VIII, Rule 1A (3) of the Code of Civil Procedure, 1908 (for short 'Code') declining to receive the documents set out in the list and mark through DW.2.

2. The petitioner - defendant No.4 filed the aforesaid application under Order VIII, Rule 1A (3) of the Code alleging that the documents pertain to the suit schedule property obtained by his father were misplaced, thereby he could not produce the same along with the written statement as the documents were mixed with the other papers, and as the same were traced out recently, he requested to receive the documents by condoning the delay in filing the documents and permit him to mark those documents through his father - DW.2

3. The respondents - plaintiffs opposed the petition and filed counter stating that DW.2 is not a party to the suit and he is no way concerned with the suit plot and consequently the petition is not maintainable in law and liable to be dismissed and that the documents sought to be received were issued in the month of August, 2017, but the petitioner did not file those documents before the Court and that

the cause shown by the petitioner what prevented him in not filing those documents immediately is not satisfactory, hence, requested to dismiss the petition.

4. The trial Court upon hearing arguments of both sides, dismissed the petition as the cause shown by the petitioner is not sufficient to exercise power under Order VIII, Rule 1A (3) of the Code and that those documents cannot be marked through DW.2.

5. Aggrieved by the order, the present revision is filed on various grounds. The main ground urged before this Court is that when the petitioner explained the reasons for non-filing of the documents, the trial Court ought to have allowed the application filed under Order VIII, Rule 1A (3) of the Code, and the order passed by the trial Court is contrary to the law laid down by the Hon'ble Supreme Court in **Billa Jagan Mohan Reddy v. Billa Sanjeeva Reddy**¹, and that those documents are necessary to substantiate the contention of the petitioner and requested to set aside the order passed by the trial Court by allowing the revision and permitting him to mark those documents annexed to the list after condoning the delay.

6. During course of hearing, learned counsel for the petitioner - defendant No.4 reiterated the grounds urged in the revision.

¹. (1994) 4 SCC 659

7. As seen from the allegations made in the petition, the petitioner claiming that the documents were obtained by his father - DW.2, proposed witness in the main suit before the trial Court. The only reason assigned by the petitioner is that those documents were mixed with other house documents and thereby he could not produce the same along with written statement. The documents sought to be received are, letter correspondence between the RDO, Narayanpet and the Tahsildar, Makthal, dated 03.05.2013; counter filed by the Tahsildar in Appeal No.8 of 2013 before the RDO, Narayanpet, dated 25.02.2013; counter filed by the Tahsildar in W.P.No.1606 of 2013 before the High Court on 25.02.2013; rough sketch map of Survey Nos.5 and 7 of Makthal town, dated 28.08.2017; Form No.8A file docket paper of Lingampally village, Application in Form No.6A, dated 28.08.2017; Application in Form No.6A, dated 28.08.2017; proceedings issued by the Tahsildar, dated 25.11.2002; Sworn statements of Kurva Lingappa and Somappa; Details of Government lands in Makthal and the endorsement made by Tahsildar, Makthal, dated 30.08.2017. Most of the documents pertain to the year 2013, and five documents pertain to the year 2017. It is the case of petitioner that those documents were misplaced with other papers, and thereby they could not be produced along with written statement.

8. The suit was filed for the relief of perpetual injunction restraining the defendants from interfering with the possession and enjoyment of plot Nos.9 to 12 to an extent of 100 square yards each in

Sy.No.7, situated at Makthal proper and Mandal. The petitioner filed her written statement raising several contentions, more particularly claiming possession over the suit schedule property. It is the specific contention of the petitioner that she is in possession by virtue of assignment etc., and in the entire written statement there was no reference about the documents sought to be received along with the petition under Order VIII, Rule 1A (3) of the Code. Even if the documents are received, when there is no pleading in the written statement, receipt of those documents after condoning delay would not serve any purpose. In the absence of any plea, any amount of evidence adduced would not serve any purpose. More over, exercise of power under Order VIII, Rule 1A (3) of the Code is not a matter of routine, and this Court had an occasion to deal with a similar situation in **Voruganti Narayana Rao v. Bodla Rammurthy and others**². In the said decision, this Court held that when the defendant failed to produce the documents along with written statement, he cannot be permitted to file after too belated stage, unless proper and sufficient reasons furnished for not producing documents along with written statement, and grant of leave by Court is not for mere asking, and taking a plea of respondents that documents could not be traced as correct, nothing prevented them from filing application either before or at least at time when those documents were confronted to a witness, and the Court cannot receive documents on mere asking.

². 2011 (6) ALD 142

9. In the present facts of the case, as stated above, there was no reference about those documents and no specific plea about various proceedings before the RDO and representations etc. Order VIII, Rule-1A (3) of the Code obligates the defendant to file all the documents relied on, along with written statement which are in his possession. According to clause-2 of Rule 1A of the Code, if those documents are not in possession or power of the defendant, he shall state wherever necessary that those documents are in his possession or power of any other person and clause-3 of Rule 1A of the Code is an exception to clauses-1 and 2 of Rule-1A and the Court can receive the documents if sufficient cause is shown for failure to file the documents as required under clause-1 of Rule 1A of Order VIII of the Code. But, the reason assigned by the petitioner is that they were misplaced at the time of written statement. The written statement was filed in the month of June, 2014, but whereas some of the documents were obtained on 28.08.2017. Therefore, the cause shown by the petitioner that the documents were misplaced on the date of filing the written statement is misconceived and, therefore, the reason assigned by the petitioner is not sufficient to exercise power under clause-3 of Rule 1A of Order VIII of the Code to receive the document condoning the delay in filing the documents. The judgment of the Apex Court in **Billa Jaganmohan Reddy**¹ referred in the grounds of revision, has no application as it pertains to the period prior to amendment to the Code by Act 22 of 2002. Consequently, based on the principle laid down in the above decision, the order under challenge cannot be set aside.

10. In addition to the above fallacy in the contention the petitioner intending to mark the documents through DW.2, father of petitioner - defendant No.4. But, when he is not a party to the suit or party to the documents, the said documents cannot be marked since he has no knowledge. Therefore, on this ground also, the trial Court rightly dismissed the petition and the order under challenge warrants no interference as I find no legal infirmity warranting interference at this stage, exercising power under Article 227 of the Constitution of India. Consequently, the revision is liable to be dismissed.

11. Accordingly, the present Civil Revision Petition is dismissed. No order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in the Civil Revision Petition stand closed.



M. SATYANARAYANA MURTHY, J

October 25, 2018
Mgr