

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CIVIL REVISION PETITION NOs.1883 & 1885 OF 2014**

**COMMON ORDER:**

These civil revision petitions are filed under Article 227 of the Constitution of India, challenging the orders in I.A.Nos.698 & 699 of 2013 in O.S.No.42 of 2006 dated 13.02.2014 passed by the Principal Junior Civil Judge at Jagtial, dismissing the applications filed under Order VIII Rule 1-A(3) r/w Section 151 C.P.C.

I.A.No.698 of 2013 was filed by the petitioners seeking to reopen the defendants evidence, alleging that petitioner no.4 is a practicing Advocate at Hyderabad and the suit was posted for defendants evidence on 23.09.2013 and upon his instructions, his counsel filed an application to receive the documents under Order VIII Rule 1-A, but the suit was adjourned to 25.09.2013 by returning the same. Further, it is stated that the suit was again adjourned to 25.09.2013 and 27.09.2013. On 27.09.2017, the Court closed the defendants evidence and posted for arguments. The petitioner further submitted that he is regularly practicing at Hyderabad and involved in important cases, as such he was unable to appear before the Court on 27.09.2013 to adduce evidence. That apart, his non-appearance was neither wilful nor wanton and prayed to set-aside the order passed in I.A.No.698 of 2013.

The respondent/plaintiff filed counter, denying material allegations, while admitting that the petitioner is a practicing advocate at Hyderabad and staying at Gullapet, but, the petitioners failed to attend the court when the suit was posted on 23.09.2013, 25.09.2013 and thereafter on 27.09.2013 for evidence

of the defendants. Since the defendants did not adduce their evidence and none of the defendants were present, the defendants evidence was closed on 27.09.2013 and posted for arguments.

I.A.No. 699 of 2013 was filed to receive documents enclosed along with the petition along with the counter in I.A.No.395 of 2006, alleging that, in support of his claim, he filed some documents in original and some photo copies of the documents along with his counter in I.A.No.395 of 2006 and that, he proposed to file list of documents annexed to the petition, as the same were not traced by the date of filing written statement and now, they are traced in the house after the demise of his father and requested to receive the documents set-out in the list.

The respondents filed counter denying material allegations, while contending that, there are no grounds and muchless, sufficient cause to receive the documents set out in the list filed under Order VIII Rule 1-A(3) C.P.C and prayed for dismissal of the petition.

The Trial Court dismissed the petitions disbelieving the cause shown by the petitioner.

Aggrieved by the said orders, the present civil revision petitions are filed on the ground that, the reason for non-appearance of the petitioners being a practicing Advocate is admitted and the same was not taken into consideration by the Court below, though he appeared on earlier dates of adjournment, except on the date when the order was passed.

The Court ought to have given an opportunity to adduce evidence to do complete justice to both the parties, allowing the parties to bring the facts of the case to prove their respective

contentions. But, the Trial Court committed an error in dismissing the petitions. Learned counsel for the petitioner further contended that, when the documents were traced subsequent to filing written statement and after demise of the petitioner's father, the Court can condone the delay in filing petition to receive the documents, if satisfied that there is reasonable and sufficient cause by exercising Order VIII Rule 1-A(3) C.P.C and the Trial Court committed an error in dismissing the petition.

During hearing, learned counsel for the petitioner reiterated the grounds urged in the revision, whereas, the learned counsel for the respondent supported the orders in I.A.Nos.698 & 699 of 2013 in O.S.No.42 of 2006 dated 13.02.2014 passed by the Principal Junior Civil Judge at Jagtial, in all respects and prayed for dismissal of the petitions.

C.R.P.No.1883 of 2014 is filed against the order passed in I.A.No.698 of 2013, which was filed under Section 151 C.P.C to reopen the defendants evidence.

It is an undisputed fact that the petitioner is a practicing advocate regularly in Hyderabad Courts and it is also clear from the affidavit of the petitioner that he appeared on various dates of adjournment and filed an application under Order VIII Rule 1-A(3) C.P.C and the suit was posted for defendants evidence on 23.09.2013 and upon his instructions, his counsel filed an application to receive the documents under Order VIII Rule 1, but the suit was adjourned to 25.09.2013 by returning the same. Further, it is stated that the suit was again adjourned to 25.09.2013 and 27.09.2013. On 27.09.2017, the Court closed the defendants evidence and posted for arguments. As the petitioner is

regularly practicing at Hyderabad and involved in important cases, he could not appear before the Court on 27.09.2013 to adduce evidence. The reason appears to be just and reasonable, which prevented him from appearing before the Court on the date of adjournment.

Instead of preventing the parties to bring on record entire evidence to decide the suit effectively, the Court did not allow the petitioner to adduce evidence for the simple reason that, he was absent on the date of adjournment without taking into consideration the conduct of the petitioner.

In **Arjun Singh v. Mohindra Kumar and others**<sup>1</sup>, the Apex Court in the said judgment, held as follows:

“1So far as the case before us is concerned the order under appeal cannot be sustained even on the basis that the finding recorded in disposing of an application under O. IX, r. 7 would operate as res judicata when the same question of fact is raised in a subsequent application to set aside an ex parte decree under O. IX, r. 13. This is because it is not disputed that in order to operate as res judicata, the court dealing with the first matter must have had jurisdiction and competency to entertain and decide the issue. Adverting to the facts of the present appeal, this would primarily turn upon the proper construction of the terms of O. IX, r. 7. The opening words of that rule are, as already seen, 'Where the Court has adjourned the hearing of the suit ex parte'. Now, what do these words mean ? Obviously they assume that there is to be "a hearing" on the date to which the suit stands adjourned. If the entirety of the "hearing" of a suit has been completed and the Court being competent to pronounce judgment then and there, adjourns the suit merely for the purpose of pronouncing judgment under O. XX, r. 1, there is clearly no adjournment of "the hearing" of the suit, for there is nothing more to be heard in the suit. It was precisely this idea that was expressed by the learned Civil Judge when he stated that having regard to the stage which the suit had reached the only proceeding in which the appellant could participate was to bear the judgment pronounced and that on the terms of rules 6 & 7 he would permit him to do that. If, therefore, the hearing was completed and the suit was not "adjourned for hearing", O. IX, r. 7 could have no application and the matter would stand at the stage of O. IX, r. 6 to be followed up by the passing of an ex parte decree making r. 13 the only provision in order IX applicable. If this were the correct position, it would automatically follow that the learned Civil Judge would have no jurisdiction to entertain the application dated May 31, 1958 purporting to be under O.

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<sup>1</sup> AIR 1964 SC 993

IX, r. 7, or pass any order thereon on the merits. This in its turn would lead to the result that the application under O. IX, r. 13 was not only competent but had to be heard on the merits without reference to the findings contained in the previous order”

Thus, when once the suit is reserved for judgment, question of reopen does not arise and it is for the Judge to decide the matter, in view of the law declared in **Arjun Singh**<sup>1</sup> case. Once the Court completed hearing of the matter and reserved the matter for judgment, any party is not entitled to file a petition to reopen the evidence. But, here, the Trial Court listed and posted the suit for arguments. Therefore, at the stage of arguments, if the petitioner is able to satisfy the Court that there is sufficient cause which prevented him to appear on the date of adjournment, the Court can exercise such discretionary power judiciously in favour of the petitioner and reopen the suit, enabling the parties to bring on record the entire evidence to decide the *lis* pending before it effectively. But the Court below committed an error in dismissing the petition. Therefore, C.R.P.No.1883 of 2014 is allowed setting-aside the order passed in I.A.No.698 of 2013 in O.S.No.142 of 2006 and the evidence of the petitioner is reopened and the Trial Court is directed to fix a specific date for adducing evidence by the petitioner herein and in the event of failure to adduce evidence on the date fixed by the Court, the Court shall pass appropriate order in accordance with law.

C.R.P.No.1885 of 2014 is filed against I.A.No.699 of 2013 in O.S.No.142 of 2006 to receive the documents set out in the list.

Order VIII Rule 1-A C.P.C deals with duty of defendant to produce documents upon which relief is claimed or relied upon by him and according to it:-

(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set off or counter claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to documents

(a) produced for the cross-examination of the plaintiff's witnesses, or

(b) handed over to a witness merely to refresh his memory.

It is not known whether there is any reference in the written statement about the documents, though not filed or referred in the list annexed to the written statement. But, the petitioner did not

comply the requirement under Order VIII Rule 1-A(3) C.P.C. Even though the Court can receive the documents, if satisfied that there is a sufficient cause for non-filing of their documents. However, it is not known whether there is any reference about the documents received by the Court and therefore, it is difficult for this Court to decide whether there is any reference about the documents referred above. But, in those circumstances, it is left open to the Trial Court to verify the written statement filed by the petitioner and find out whether there is any reference about these documents set-out on the list annexed to the petition. If, these documents are referred in the written statement, basing on their claim on those documents, the Trial Court is permitted to receive the documents referred in the written statement and reject the documents which are not referred in the written statement.

Hence, C.R.P.No.1885 of 2014 is allowed with a direction to the Trial Court to verify whether these documents set out in the list are referred in the body of the written statement and if the Trial Court found that these documents are referred in the written statement, though not filed, the Trial Court can receive the documents and if not referred, reject those documents.

In the result, both the civil revision petitions are allowed.

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

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**JUSTICE M. SATYANARAYANA MURTHY**

Date:13.03.2018

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