

**In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh**

CIVIL REVISION PETITION No. 6220 of 2018

Between:

Gangisetty Vijaya Kumar

... Petitioner

and

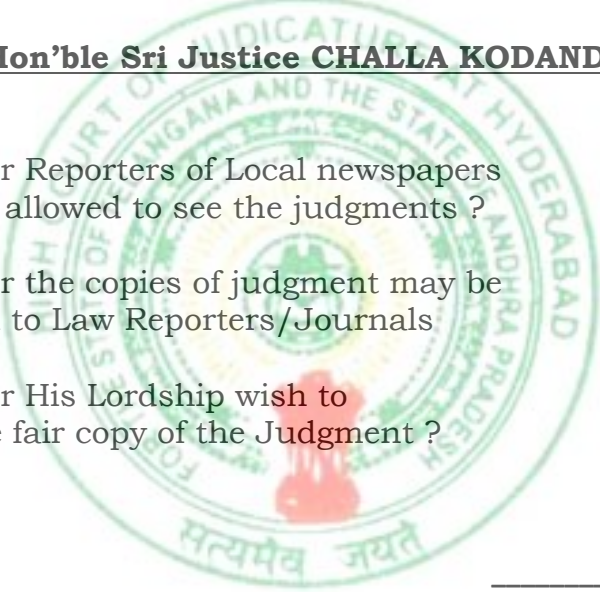
Potti Ayyanna & others

...Respondents

Date of Judgment Pronounced: 08-11-2018

Submitted for Approval:

The Hon'ble Sri Justice CHALLA KODANDA RAM

- 
1. Whether Reporters of Local newspapers may be allowed to see the judgments ? No
 2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes
 3. Whether His Lordship wish to see the fair copy of the Judgment ? No

(CHALLA KODANDA RAM, J)

*** The Hon'ble Sri Justice CHALLA KODANDA RAM**
CIVIL REVISION PETITION No. 6220 of 2018

% Dated 08.11.2018

Between:

Gangisetty Vijaya Kumar

... Petitioner

and

Potti Ayyanna & others

... Respondents

! Counsel for the petitioner : Sri M. Rammohan

^ Counsel for the respondent No.1 : Smt. V. Dyumani

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>HEAD NOTE:

? Cases cited:

1. AIR 1976 Andhra Pradesh 205
2. AIR 1989 Punjab & Haryana 229
3. AIR 1994 Supreme Court 2562
4. AIR 2009 Supreme Court 1604
5. AIR 1991 Bombay 296



THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 6220 of 2018

ORDER :

This Revision is directed against the Order dated 27.09.2018 in I.A. No. 1391 of 2018 in O.S. No. 22 of 2010 on the file of the III Additional District Judge, Kurnool at Nandyal.

Petitioner herein is the 1st defendant in the suit filed by the 1st respondent – plaintiff seeking specific performance of agreement of sale dated 13.06.2007. Therein, the 1st respondent had taken out the subject Application to reopen his side of evidence to examine one of the attestors to the agreement of sale, by name Sri G. Lakshminarayana. The learned III Additional District Judge passed the order under revision which reads thus:

“ Heard both sides. Perused the affidavit, petition and counter. In the above circumstances in the interest of justice to give an opportunity the Petition is allowed on cost of Rs.300/- to the respondent. Cost paid memo file. Hence Petition is allowed.”

Heard learned counsel for the petitioner, who contended that the affidavit filed in support of the Application does not contain the justifiable reasons for not examining the attesor on earlier occasion. Further, the learned counsel submits that the objections raised by the petitioner, in detail, in the counter-affidavit was not adverted to even remotely. Hence, the Order under Revision, being non-speaking, suffers from grave error, emphasizes the learned counsel. According to the learned counsel, the defendants' side evidence was also closed on 23.07.2013 itself and that therefore,

the Order requires to be set aside for, the effort on the part of the plaintiff is only to fill-up the lacuna by examining the attestor.

On the other hand, learned counsel for the 1st respondent submits that the 1st respondent - plaintiff, having come to know about execution of certain sale deeds by defendants 1 to 6, was forced to seek amendment of the plaint by bringing on record defendants 9 to 11 and the said Application came to be allowed only in January 2018. Thereafter, he filed I.A. No. 522 of 2018 to summon the witnesses named therein for examination and the said Application also came to be allowed *vide* order dated 28.04.2018. Pursuant to the said Order, the plaintiff had examined three of the witnesses. The learned counsel further asserts that the Order, though is not elaborate, depicts application of mind by the learned Judge, who had simply reasoned that to give an opportunity, obviously, to the plaintiff, and allowed the Petition by imposing costs of Rs.300/-. The learned counsel further submits that mere accepting costs by the petitioner bars him from questioning the said Order. To support her contention, she places reliance on the judgments of this Court in ***The Metal Press Works Ltd. V. Guntur Merchants Cotton Press Co. Ltd.***¹ and that of the Punjab & Haryana High Court in ***Amar Singh v. Perhlad***².

At this stage, the learned counsel for the petitioner has placed reliance on the judgments in ***Bijendra Nath***

¹ AIR 1976 Andhra Pradesh 205

² AIR 1989 Punjab and Haryana 229

Srivastava (dead) through LRs v. Mayank Srivastava³ and **Vadiraj Naggappa Vernekar v. Sharad Chand Prabhakar Gogate**⁴ and submits that the judgment of this Court in **The Metal Press Works Ltd. case** (cited supra) stands distinguished by the Supreme Court. The learned counsel also contends that the judgment of the Punjab & Haryana High Court in **Amar Singh's case** (cited supra) was dissented by the one in **K.R. Singh v. Smt. A.G. Thakare**⁵.

Having considered the respective submissions, the questions that fall for consideration before this Court are 'whether the order under Revision is sustainable in law and whether the petitioner is estopped from questioning the said order on the ground that he had accepted the costs awarded by the Court below'.

At the outset, I desire to deal with the argument of the learned counsel for the 1st respondent questioning the very maintainability of the Revision. By laying emphasis on para 39 of the Division Bench judgment of this Court in **The Metal Press Works Ltd.'s case** (cited supra), the learned counsel would submit that there is absolute bar on the party, who had accepted costs, to challenge the Order. Para 39 reads as under:

“ We find one more substantial ground to reject the plea of waiver raised by the respondent. As pointed out earlier, the amendment for the written statement was allowed on June 30, 1969 on payment of Rs.30/- as costs to the respondent – plaintiff. The

³ AIR 1994 Supreme Court 2562

⁴ AIR 2009 Supreme Court 1604

⁵ AIR 1991 Bombay 296

order of the trial Court permitting the amendment of the written statement was, therefore, a conditional one. That order was allowed to become final as no revision was preferred. Nor has any objection been raised by the respondents before the 1st appellate Court in this regard. The 1st appellate Court which allowed the appeal preferred by the plaintiff did not give any specific finding in his favour that the amendment was belated and it should not have been allowed. The conditional order passed by the trial Court granting the amendment of the written statement must be regarded as an entire whole giving a benefit in one respect to the plaintiff and in another respect to the defendant. To put it differently, the benefit of costs to the plaintiff would not have been granted but for the corresponding benefit of amending the written statement as at a late stage to the defendant. The acceptance of costs in a conditional order would bar or prevent such party from questioning the jurisdiction or validity of the order granting amendment. In the circumstances, it must be held that the respondent – plaintiff was satisfied with the conditional order and, therefore, it must be deemed to have accepted the same and it is not open to it to challenge the same in this Court. We, therefore, hold that the awarding of costs to the plaintiff is, in fact and substance, a part of the entire order and the plaintiff who accepted a part of the same relating to award of costs is barred from attacking the rest of the order pertaining to the amendment of the original written statement which is against him.”

From a careful reading of the above judgment, it may be noted that the said observations were made in the process of considering the LPA against the Second Appeal filed by the defendant. The questions of law which fell for consideration in the Second Appeal were 1) Whether notice to quit under Section 106 of the Transfer of Property Act to a tenant hold over is or is not necessary when the original lease deed contains a term that the tenant will quit without notice after the expiry of the period fixed by the original lease: 2) Whether, on the facts and in the circumstances, the defendant-appellant can be deemed to have waived its right to question the validity of the plaintiff's notice

Ex.A1 terminating the tenancy? In the process of discussion, the Court also had taken into consideration the fact that the Order in the Interlocutory Application granting amendment in the written statement was not questioned in the first instance either in the suit or in the First Appeal or in the Second Appeal. In those circumstances, the Court's observations would have to be understood in the sense, whenever costs are accepted, the party which accepted the costs is debarred from questioning the decision however irregular or illegal the same may be. This aspect of the matter stands clarified by the Supreme Court by making a specific reference to the judgment of this Court in ***Bijendra Nath Srivastava's case*** (cited supra), by drawing a distinction in paras 20 and 21. Applying the analogy laid down by the Supreme Court in the above-referred judgment, if one examines the order impugned, the same does not indicate that the amendment was ordered on the condition of the respondent – plaintiff paying costs but the learned Judge had allowed the Petition to reopen the case for adducing evidence of the witness and in the process, had awarded the costs. In other words, allowing the petition is not conditional upon payment of costs. In that view of the matter, awarding of costs not being conditional, mere acceptance of the costs by the petitioner – defendant does not deprive him of his right to question the order. Likewise the learned counsel for the petitioner submits that the judgment of the Punjab & Haryana High Court in ***Amar Singh's case*** (cited supra) was dissented by the Bombay High Court. A careful reading of both the judgments does not indicate that to be so. On the other hand, the Bombay

High Court had enhanced the costs to Rs.1500/- from Rs.350/- that was awarded by the Court below. In those circumstances, the challenge to the order impugned is maintainable and the petitioner is not estopped from challenging the Order merely because he had accepted the costs.

On merits of the matter, a bare perusal of the above Order does not inspire any confidence as it is absolutely laconic, bereft of any reasons. The petitioner had taken great pains in raising various objections in the counter-affidavit filed before the Court below in the Interlocutory Application. None of the objections have been adverted to, particularly the one with respect to the proposal to examine the witness Sri G. Lakshminarayana in connection with the agreement of sale. The specific objection raised by the petitioner is to the effect that what is sought to be done by examining the said Lakshminarayana, attestor to the agreement of sale dated 13.06.2007 in the guise of the order in I.A.No. 522 of 2018 is nothing but to fill-in the lacuna in the plaintiff's failure to establish execution of the agreement of sale, which is the basis for initiation of the suit proceedings. It is well-settled that giving of reasons is one of the fundamentals of good administration and failure to give reasons amounts to denial of justice. Reasons are the live-links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of

natural justice is spelling out reasons for the order made, in other words, a speaking out.

In the case on hand, the order being bereft of the reasons, even on that ground also, the Order is liable to be set aside. Since the Order is liable to be set aside on the ground that the same is not a reasoned order, it is not necessary for this Court to advert to the decision in **Vadiraj Naggappa vernekar's case** (cited supra), cited by the learned counsel for the petitioner.

In the circumstances, the Civil Revision Petition is allowed, setting aside the Order dated 27.09.2018 in I.A.No. 1391 of 2018 in O.S.No.22 of 2010 on the file of the III Additional District Judge's Court at Kurnool at Nandyal. The matter is remanded to the learned III Additional District Judge for passing orders on merits, afresh, uninfluenced by the observations made by this Court in this Revision. No costs.

Consequently, the Miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

08th November 2018

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