

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**CIVIL REVISION PETITION No.5610 of 2017****ORDER:**

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed questioning the legality and propriety of the Order dt.21-09-2017 in I.A.No.58 of 2017 in O.S.No.76 of 2006 passed by the Additional Junior Civil Judge, Khammam, Khammam District.

The petitioners herein/defendants filed a Petition under Order 8 Rule 1A (3) r/w 151 CPC before the trial Court to receive the documents filed along with the petition condoning delay, alleging that respondent herein/plaintiff filed a suit for permanent injunction restraining the petitioners herein and their men from interfering with his peaceful possession of the suit schedule property, while claiming that he is the absolute owner and he is in possession and enjoyment of the same, but the petitioners herein/defendants set up a plea that the plaintiff has no right or title or interest in the schedule property and the sale deed executed by their vendor revealed that originally the property belongs to Maganti Mangaiah. An extent of 290 Sq.yards within the boundaries was purchased by the wife of petitioner No.1/D.1 from three daughters of Manganti Babu Rao and Venkata Lakshmi. To prove the ownership and possession and to disprove the contention of the respondent herein, they filed a sale deed of their vendor and the sale deeds executed by the petitioners in favour of others, certificates issued by gram panchayat, Peraigudem, House Tax receipts, Electricity Bills etc. The sale deeds executed by the petitioner No.1 in favour of others are also necessary to prove that they are the land owners.

The petitioners could not file the said documents earlier along with Written Statement and failure to file the documents is neither willful nor intentional as the sale deed was misplaced and recently it was traced and, therefore, requested the Court to receive the documents set out in the list condoning delay.

The Respondent/plaintiff filed Counter opposing the petition on the ground that the present petition is liable to be dismissed for the reason that the petitioners did not assign any reason for failure to file the documents along with the Written Statement and prayed for dismissal of the petition.

Upon hearing argument of both the counsel, the trial Court dismissed the petition assigning its specific reasons. The petitioners herein, the defendants in the suit, preferred this Revision, under Article 227 of the Constitution of India, mainly on the ground that the trial Court failed to consider the material evidence on record, which probablies the case of the petitioners and the Court below also failed to take into consideration the reason mentioned in the petition for failure to file the documents earlier and on erroneous consideration of facts and evidence of the case, dismissed the petition and prayed to set aside the same.

During hearing, Si Pavan Kumar Khoturi, on behalf of Si M.M.M. Sinivasa Rao, learned counsel for the petitioners, contended that Order 8 Rule 1A (3) C.P.C., prohibits receiving the documents after framing of the issues and the bar is not absolute, but if the petitioners are able to show sufficient cause for their failure to file the documents along with the Written Statement, the Court can grant leave to file the documents and receive the same, condoning delay in filing such documents, by exercising power under Order 8 Rule 1A (3) CPC, and placed reliance on

the judgments reported in *Bhanumathi v K.R.Sarvothaman and another*¹, *Managing Director, Andhra Pradesh State Road Transport Corporation and others v P.V.Surya Narayana*², *Voruganti Narayana Rao v Bodla Rammurthy and others*³, *Rajah R.V.G.K.Ranga Rao and another v Nizams Sugars Limited*⁴, *Bada Bodaiah and another v Bada Lingaswamy and others*⁵ and *Aggarwal Vidya Prachami Sabha v Municipal Corporation Faridabad and others*⁶ to contend that the Court can exercise power under Order 8 Rule 1A (3) C.P.C. if the petitioners are able to establish that they were prevented by sufficient cause for not filing the documents along with Written Statement and if the Court finds that the reason assigned by the petitioners is just and reasonable, the Court can permit the petitioners to introduce documents and receive the same condoning delay in filing the documents, at the stage of admission.

Now the point that arise for consideration is:

Whether the documents set out in the list annexed to the petition be received after condoning delay at the stage end of the trial and if so, the Order passed by the Court below be set aside?

POINT: Admittedly, the respondent herein/plaintiff filed a suit for permanent injunction claiming title and possession over the schedule property, but the petitioners herein set up an independent title on petitioner No.2 having purchased the property from Maganti Baburao and his wife venkata lakshmi and the petitioners sold some part of the property to the others and the sale deed under which the petitioners purchased the property is relevant to decide the real controversy

¹ ILR 2010(4) Kerala 751,

² 2017 (4) ALT 582

³ 2011 (6) ALD 142

⁴ 2004 (1) ALD 387

⁵ 2003(1) ALD 790

⁶ (2015) 177 PLR 758

between the parties and that the reason for their failure to file the documents along with the Written Statement is that it was misplaced.

In view of the specific reason, it is necessary to advert to the allegations made in the Written Statement filed along with this Petition. The petitioners raised a specific plea that father of their vendor executed a Will dt. 02.04.1991 in favour of daughters of Maganti Baburao, appointing Venkata Lakshmi W/o M. Baburao, as a testamentary guardian to his grand daughters i.e., Satyavathi, Rama Lakshmi and Suneetha. After the death of Maganti Mangaiah, the minor daughters of Maganti Baburao and Venkata Lakshmi, became owners and they sold 500 sq. yards to defendant No.1 in S.No.1170 of Aswaraopet Revenue Village within the boundaries. Thus, petitioner No.1 became the owner of the property by virtue of the purchase. It is also contended that the said Maganti Baburao and his wife sold 500 sq.yards of house site in Sy.No.1170 to defendant No.2 by registered sale deed. As per the recitals in the registered sale deed, Maganti Mangaiah executed a Will in favour of Venkata Lakshmi specifically mentioning the southern and northern boundaries in the schedule of the sale deed and thus, the petitioners are the owners of the schedule property. In the registered sale deed No.468/81, it is clearly mentioned that one of the boundary owners of the sale deed executed in favour petitioner No.2 is the petitioner No.1. They also executed certain other documents in favour of others and those documents were not filed into Court to substantiate the claim of the petitioners i.e., the petitioners/defendants. Therefore, they sought to introduce the documents and prayed for dismissal of the suit in the Written Statement.

The petitioners clearly asserted that they purchased the property from Maganti Baburao and Venkata Lakshmi being the testamentary guardian of their children i.e., Satyavathi, Rama Lakshmi and Suneetha.

At this stage, it is relevant to advert to the relevant provisions in the Code of Civil Procedure, which deals with receiving documents after condoning delay.

Order 8 Rule 1A CPC obligates the defendant to file the documents, which are relied upon by the defendants in support of his defence or claim for set off or counter claim by entering those documents in the list and produce before the Court when the Written Statement by him and shall at the same time, deliver the document and a copy thereof, to be filed with the written statement. 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 and a document which ought to be produced in Court by the defendant under the 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. But, this rule shall not apply to the documents produced during the cross-examination of the plaintiff's witnesses, or handed over to the witness merely to refresh his memory. Thus, in view of the clear mandate under Sub Rule 2 of Rule 1A of Order 8 CPC, it is the obligation of the defendant to disclose the document in whose possession it is, if it is not in possession of the defendant.

But, in the present case, there is no whisper in the entire Written Statement as to compliance of Sub Rule 2 of Rule 1A of Order 8 CPC though it is mandatory. As seen from the allegations, the documents were available with the petitioners at the time of filing suit and they relied on the documents in support of their claim setting up independent title

having purchased the property from Maganti Baburao and Venkata Lakshmi.

Order 8 Rule 1A CPC is identical to Order 7 Rule 14 CPC. In view of the language used in Sub Rule 3 of Rule 1A of Order 8 CPC and Sub Rule 3 of Rule 14 of Order 7 CPC, the same analogy can be applied to the filing of documents by the defendant. Sub Rule 3 of Rule 14 of Order 7 CPC and Order 8 Rule 1A (3) CPC makes it clear that documents which ought to be produced by the plaintiff or defendant, when the plaint or written statement is presented, or to be entered in the list to be added or annexed to the plaint or written statement, but is not produced or entered accordingly, shall not without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. Sub Rule 3 of Rule 14 of Order 7 CPC and Sub Rule 3 of Rule 1A of Order 8 CPC, which stands introduced into the Code with effect from 01.07.2002, makes it clear that the legislative intentment is that originally and in except under special circumstances, the plaintiff shall not be allowed to introduce into evidence any document with the plaintiff, while presenting the plaint or the defendant filing written statement ought to have delivered to the Court along with a copy thereof and which document the plaintiff ought to have entered into the list to be added or annexed to the Plaint. The harsh consequences failing from produce the documents along with the plaint are thus clearly emphasised in Sub Rule 3 of Rule 14 of Order 7 CPC and Sub Rule 3 of Rule 1A of Order 8 CPC.

When *Order 7 Rule 14 CPC* is read in the light of Order 5, it becomes abundantly clear that while annexing a copy of the plaint with the summons is a condition precedent for the effective service of summons on a defendant, furnishing of a copy of the document based on which the plaintiff institutes the suit or a document on which the plaintiff relies on in support of his claim need not be furnished to the

defendant. Thus, this, however, mean that, the Court is powerless in a given case to direct the plaintiff to furnish copies of the documents based on which the plaintiff has instituted the suit or copies of the documents on which the plaintiff relies to support his claim. So, it is clear that Order 7 Rule 14 CPC relates to the production of documents by the plaintiff; whereas Order 8 1-A relates to production of documents by the defendant. Under Order 8 Rule 1A (4) CPC, a document not produced by defendant can be confronted to the plaintiff's witness during cross-examination. Similarly, the plaintiff can also confront the defendant's witness with a document during cross-examination. By mistake, instead of 'defendant's witnesses', the words 'plaintiff's witnesses' have been mentioned in Order 7 Rule (4) C.P.C. To avoid any confusion, the Court is directed that till the legislature correct the mistake, the words 'plaintiff's witnesses', would be read as 'defendant's witnesses' in Order 7 Rule 4., However, the Court hope that the mistake would be expeditiously corrected by the legislature, as observed in *Salem Advocate Bar v Union of India*⁷. But, the said mistake is not rectified till date. The mistake crept in Sub Rule 4 of Rule 14 of Order 7 CPC is not rectified, but Sub Rule 4 of Rule 1A of Order 8 CPC is correctly mentioned. However, it does not make any difference.

On perusal of Order 8 Rule 1 A (3) CPC or Order 7 Rule 14 (3) C.P.C., the bar contained under rule is not an absolute bar but with the leave of the Court, the parties can introduce documents though they were not entered in the list either with the plaint or with the Written Statement satisfying the Court about the reason for failure to file the documents.

Originally, Order 13 Rules 1 and 2 prior to amendment deals with receiving documents at any stage. But documentary evidence to be

⁷ AIR 2005 Sc 3353

produced yet or before settlement of the issue and the Court shall receive the documents so produced provided that the petition is accompanied by an accurate list thereof prepared in such form as directed by the Court. But, this provision was repealed after amendment of Order 7 and 8 CPC. A reading of the amended provisions of CPC and the provisions prior to amendment, makes it abundantly clear that originally the plaintiff and defendant were expected to produce the documents to the Court along with the Plaint and Written Statement in their possession or power on which they sue and only in respect of other documents whether in his possession or not which supported his claim, he shall enter such document in a list to be added or annexed to the Plaint. In respect of documents which ought to have been produced by the plaintiff or defendant along with the plaint or written statement presented before the Court, or to be entered in the list to be added or annexed to the plaint but is not produced or entered shall not without the leave of the Court, be received in evidence on his behalf at the time of hearing of the suit. Thereafter, the parties have an opportunity to produce yet or before settlement of the issue all the documents of every description in their power or possession on which they intend to rely and which has already not been filed into the Court and all the documents that the Court has ordered to be produced and if so produced shall be received by the Court. If the documents are not produced as required under Order 13(1) of pre-amendment Act, there was a prohibition on the power of the Court to receive the same at a subsequent stage of proceedings unless good cause is shown to the satisfaction of the Court, for non-production of documents thereof and the Court receives such evidence to give reasons to be recorded in writing before receiving.

The drastic amendment which resulted in the right of the parties to produce the documentary evidence, which is the most substantial portion

of evidence in civil litigation was taken away and was subject matter of agitation. But, the provision remained as it is in both Order 7 and Order 8 CPC. Therefore, it is the duty of the parties to the suit to produce the documents entering into a list annexed to the plaint or written statement strictly in compliance of sub Rule 3 of Rule 14 of Order 7 CPC or Sub Rule 3 of Rule 1A of Order 8 CPC. At the same time, sub Rule 2 of both the rules mandates that either the plaintiff or the defendant has to disclose in whose possession the document is available, if not available either with the plaintiff or the defendant. Non-compliance of such mandatory requirement is also to be taken into consideration while deciding an application under Order 7 Rule 14 (3) CPC or Order 8 Rule 1A of Sub Rule 3 of CPC.

Coming to the present facts of the case, the petitioners herein though claimed that they became owners by virtue of two registers/sale deeds executed by Maganti Baburao and his wife Venkta Lakshmi, they did not enter those documents in the list of documents annexed to the Written Statement. The only reason assigned by the petitioners in the affidavit for their failure to file documents as required under Order 8 Rule 1A CPC is extracted hereunder for better appreciation:

“ The non-filing of the said documents earlier is not at all wilful or intentional as our sale deed was misplaced and recently it was traced out. The other documents are necessary in the present circumstances.”

Except the sentences extracted above, no other reason was assigned. At best, the reason assigned by the petitioner could satisfy the requirement only for failure to produce sale deed allegedly misplaced and recently traced, but so far the other documents are concerned, absolutely there is no explanation for failure to file such documents. As per sub Rule 2 of Rule 1A of Order 8 CPC, for any reason the sale deed is not readily available with the petitioner or misplaced, it is the obligation of

the petitioners/defendants to disclose the said fact in the Written Statement. No such recital is found in the Written Statement, in compliance of Sub Rule 2 of Order 1A of Order 8 CPC. The trial Court dismissed the petition, placing reliance on the judgment of this Court in *Pandit Nehru Bus Station, Vijayawada, Krishna District and others v P.V.Surya Narayana*⁸, wherein this Court held that documents can be received granting leave on adequate reasons being furnished justifying failure on the part of the applicant in not filing the documents along with the Written Statement. The Court also adverted to the judgment of this Court in *Rajah R.V.G.K.Ranga Rao and another v Nizams Sugars Limited, Latchayyapeta, Seethanagaram Mandal, Vizianagaram District*⁹. Even in the said judgment also, the Court held that, when valid reasons for not filing of documents earlier are shown, the Court should ordinarily lean in favour of receiving the documents than in refusing the same. The affidavit filed along with the petition, more particularly in para No.5, where the reason for failure to file the documents, as required under Order 8 Rule 1A is explained, the reason is that the document was misplaced and recently traced.

The trial Court having observed that the petitioners did not comply the requirement of Order 8 Rule 1A CPC and dismissed the petition as there was no justifiable reason or cause for the petitioners' failure to file the documents in the year 2006 along with the written statement.

During argument, the counsel for petitioners contended that, the reason assigned by the petitioners is sufficient and justifiable cause for failure to file documents along with the Written Statement since it was not traced and drawn the attention of this Court to a judgment of this Court in *Bada Bodaiah's case* (5 supra), wherein this Court in para No.13 of the

⁸ (2017) 4 ALT 582

⁹ (2004) 1 ALD 387

judgments held that a reading of Rule 1 of Order 8 CPC alone would show that the Court shall receive the documents produced on or before the settlement of issues if the copies thereof have been filed along with the plaint or written statement. The Court has no power to receive the documents produced subsequently. Further, Sub-rule (3) of Rule 14 of Order 7 CPC empowers the Court to give permission or leave to the plaintiff to produce documents at a subsequent stage of hearing of the suit. Order 13 Rule 1 and Order 7 Rule 14 (3) CPC have to be read together harmoniously. Reading together would lead that if the plaintiff applies for permission or leave to produce documents to be received in evidence at the hearing of the suit which documents were not produced on or before settlement of the issues or at the time of production of the plaint, the Court has to exercise sound discretion having regard to the facts and circumstances of each case. Mere non-mention of the documents in the plaint or subsequent incidental or supplemental proceedings in the suit does not in any manner affect the power of the Court to grant leave to produce the documents at the subsequent stage. Non-mentioning of the documents sought to be produced at the subsequent stage is a curable defect. With the leave of Court, which is condition precedent under Sub-rule (3) of Rule 4 of Order VII read with Sub-Rule (1) of Order 13 to receive the documents, documents can be produced at the time of trial. But Order VII Rule 14(3) CPC being an exception to the Rule in Order 7 Rule 14(1) as well as Order 8 Rule 1-A (2) CPC, the power to grant must be exercised in rare cases and not in a routine manner.

Similarly, in *Bhanumathi's case* (1 supra), the Kerala High Court persuaded by the judgment of Karnataka High Court in *Nanjunda Setty v Tallam Subbaraya Setty and Son*¹⁰ and Andhra Pradesh High Court judgment in *Rajah R.V.G.K. Ranga v Nizams Sugars Limited* (4 supra) taken

¹⁰ 2004 (15) ILD 508

note and gave a liberal interpretation to the hearing of the suit and received the documents as the plaintiff was able to show justifiable reason.

Earlier, he drawn the attention of this Court to another judgment reported in *Aggarwal's case* (6 supra), wherein the High Court of Punjab and Haryana held that Order 8 Rule 1A(1) of CPC provides that the defendant basing his case on any document in his possession or power should enter such document in a list (list of documents) and shall produce it in the Court with the written statement and at the same time deliver the document and a copy thereof. Order 8 Rule 1A(2) of the CPC further provides that where any such document is not in possession or power of the defendant, he should, as far as possible, state in the list of documents the person in whose possession or power the said document is. Order 8 Rule 1A(3) of the CPC provides that a document which ought to be produced in the Court by the defendant either under Order 8 Rule 1A(1) or 1A(2) of the CPC, but not so produced, still can be produced and received in evidence on behalf of the defendant at the time of hearing of the suit with the leave of the Court, which means that the defendant cannot voluntarily produce on record such document, which has a reference in his written statement and has not been made a part of the written statement in terms of Order 8 Rule 1A(1) of the CPC except with the leave of the Court. Order 8 Rule 1A(4) of the CPC lays down that the proviso to Order 8 Rule 1A CPC would not apply to such documents which are produced by the defendant for the cross-examination of the plaintiff witness or handed over to a witness for the purpose of refreshing his memory. Though Punjab and Haryana Court did not lay down any law, except referring the provisions of CPC as amended the counsel relied on the same judgment.

The law laid down in all the judgments manifestly clear that the petitioner has to show justifiable cause for his failure to file documents along with the plaint or written statement as the power under Sub Rule 3 of Rule 1A of Order 8 CPC cannot be exercised as a matter of routine and such power can be exercised in rare cases.

Our High Court in various judgments laid down that the Court can receive the documents only if sufficient cause is shown, but not as a matter of routine.

In *GPR Housing Private Limited, Hyderabad, rep. by its Managing director G. Punna Rao v. C. Prithvi Raj Reddy and others*¹¹ in paragraph 11, this Court held that Order VII Rule 14 of the Civil Procedure Code, 1908, enjoins upon the plaintiff to enter all documents, upon which he relies in a list, and produce them in the Court when the plaint is presented. However, Sub-Rule (3) thereof vests power in the Court to grant leave to file the documents at a later stage but such power has to be exercised only upon the party satisfying the Court that, for convincing reasons, those documents could not be filed earlier. There can be no hard and fast rule for the Court to exercise discretion while granting leave under Sub Rule (3) of Rule 14. The Courts must always exercise sound discretion while dealing with the applications for leave to file additional material. Mere delay by itself would not constitute the sole ground for rejecting the leave. If the facts and circumstances of the case justify non-filing of the documents at an earlier stage, the Court will not reject the application for leave only on the ground of delay. In the ultimate analysis, the endeavour of the Court must always be to decide the real controversy in issue. If the material sought to be produced has relevance on the issues involved in the suit

¹¹ 2015 (1) ALD 330

and helps the Court to determine the issues properly and effectually, the Court must exercise its discretion in favour of allowing such evidence.

In *M.R. Anjaneyulu, S/o. Ramappa vs. R. Subramanyam Achary, S/o. Rajachari*¹², this Court while deciding an application filed under Order 8 Rule 1A (3) CPC is of the view that Clause (3) of Order VIII Rule 1A CPC was incorporated by Act 22 of 2002 with a view to discourage the practice of the parties filing documents at a belated stage of the proceedings. The law is well settled that procedure is handmaid of justice. While procedural laws need to be adhered to in order to avoid long delays in disposal of the cases, at the same time, the Courts will have to make a delicate balance between strict adherence to those procedural laws and the substantial justice that needs to be ensured for the parties. In the anxiety to curb delays, stopping the parties from adducing relevant evidence would lead to failure of justice. However, fair amount of discretion is vested by Order VIII Rule 1A (3) CPC in the Courts to permit filing the documents. No hard and fast principles can be laid down for the Courts as to how this discretion has to be exercised. While exercising such discretion, the Courts will have to consider relevant aspects such as the conduct of the parties, the nature of the documents that are sought to be filed and whether by permitting filing such documents, the same will help the Court to adjudicate the suit in a more effective manner etc. The Court should also consider the stage at which the documents are sought to be filed.

Similarly, in an unreported judgment of this Court in *Jai Sha v. Deewan Ranveer Singh and another* (CRP No.5266 of 2011 dt. 22.10.2013) and *Voruganti Narayana Rao S/o Pullaiah v. Bodla Rammurthy S/o*

¹² 2012(5) ALD 243

*Venkata Narayana*¹³ held that Rules 1-A and 1-A(3) of Order VIII Code of Civil Procedure, were substituted by Act 46 of 1999 with effect from 01.07.2002. The object with which those Rules were amended was to curb the phenomenal delays in the procedural aspects leading to procrastination of the proceedings before the civil court. The Parliament has thought it fit to stipulate time limits for the parties to file their defense and produce the documents along with the defense so that the cases can be disposed of without avoidable delays. This being the avowed object with which the above noted provisions are amended, Rule 1-A(3) of Order VIII Code of Civil Procedure, which on a literal interpretation appears to vest unlimited discretion with the Court, requires to be the defendant produced the said documents after filing of the written statement, therefore, needs to be circumspect in examining whether proper reasons are assigned by the defendant for not producing the documents along with the written statement. Unless the reasons assigned by the defendant discloses sufficient cause for his failure to produce the documents within the time stipulated in Rule 1-A of Order VIII Code of Civil Procedure, the Court shall not permit the defendant to file such documents later. Undoubtedly, unduly liberal approach in this regard would frustrate the purpose for which the provisions of the Code of Civil Procedure are amended. This Court in *Ravi Satish v. Edala Durga Prasad* [2009 (3) ALT236] held that grant of leave by the Court is not for the mere asking nor is the Court a mere post office to receive documents even in the absence of any reasons furnished for failure to file the said documents along with the written statement.

Yet another judgment in *Ravi Satish v Edala Durga Prasad* and others¹⁴, single judge of this Court held that, Sub Rule (3) of Rule 1-A of

¹³ 2011(6) ALD 142

Order 8 CPC permits the documents to be received only on leave being granted by the Court. Grant of leave is not for the mere asking, nor is the Court a mere Post-Office to receive documents. In the absence of any reason being furnished for failure to file the said documents along with the written statement. Admittedly, in the case on hand, no reasons whatsoever have been furnished by the petitioner, let alone adequate cause been shown as to why the documents, which were the subject matter of the application, could not be filed earlier along with the written statement. Having chosen not to give any reasons, it is not open to the petitioner to contend that the Court below should have received the documents, since the petitioner's right could be adversely affected for failure on its part to receive the documents. While it is no doubt true that admissibility and proof of documents are matters which ought not to be gone into at the time of receipt of documents, the fact, however, remains that the leave sought for can only be granted on adequate reasons being furnished justifying failure on the part of the applicant in not filing the documents along with the written statement earlier. The contention that no prejudice can be said to have been caused to the respondent/plaintiff has been rejected by the Court below on the ground that their right to file rejoinder based on the said document had been denied. The Court below has not committed any jurisdictional error nor has its order resulted in such manifest injustice as to necessitate interference by this Court under Article 227 of the Constitution of India. Thus, the law consistently by this Court in *Jai Siba's case* and *Voruganti's case* and other judgments on which the counsel for the petitioner relied on is consistent that the Court has to record reasons for receiving such documents, on satisfying the Court about just cause to receive the document and the Court is not discharging the duties of a post master to receive the documents and consider it.

Admittedly, the suit was filed in the year 2006 and the present petition was filed at the fag end of the trial, that too in the year 2017, almost 11 years after filing Written Statement dt. 12.09.2006. But the petitioners did not comply with the mandatory requirement under Sub Rule 2 of Order 8 (1A) CPC while filing Written Statement dt. 12.09.2006 before the trial Court.

Curiously, in para No.6 of the Written Statement, the petitioners mentioned all the details including the sale deed number and date under which they purchased the property. If really, the sale deed was not readily available and misplaced, as contended in the present petition, the question of mentioning the registered sale deed numbers and date of registrations etc., does not arise. In those circumstances, filing of additional documents under Sub Rule 3 of Rule 1A of Order 8 CPC on the ground that the sale deed was misplaced is a lame excuse to introduce documents set out in the list for their negligence in filing along with the Written Statement. More curiously, though the petitioners filed bunch of documents, they did not assign any reason for their failure to file those documents except giving explanation for non filing of registered sale deed by which they purchased the property allegedly. That apart, the document was filed at the fag end of the trial i.e., at the stage of argument.

In similar circumstances in *Kishan Chand v Pankaj Abbani*¹⁵, the High Court of Rajasthan held that when a petition was filed under Order 8 Rule 1 and 1A (3) CPC., at the fag end of the trial, when the matter was posted for final arguments and even that could not take place for last two years, the very purpose of Order 8 Rule 1 and Order 8 Rule 1 A CPC is cast an obligation upon the defendant to produce documents along with

¹⁵ SBCWP NO.4951/2008, dt.25.07.2008

written statement or with the leave of court was sought to be frustrated by the defendant by filing such application at the fag end of the trial. Sub - Rule (3) cannot be stretched to allow such filing or producing documents at the fag end of the trial and to put the clock back at square one of trial. The said documents sought to be produced by the defendant were not only irrelevant but were deliberately produced at the fag end with a view to delay the trial and dismissed the petition.

Coming to the facts of the present case, the trial in the main suit is almost completed and that too it is a pre-2012 matter, which shall be disposed of on or before March, 2018 as directed by the Apex Court on judicial side and this Court by issuing various circulars.

The petitioners assigned reason for their failure to file sale deed along with the Written Statement, but no explanation was given for their failure to file other documents shown in the list. Even the reason assigned for non filing of sale deed cannot be accepted since the petitioners mentioned all the details including registered sale deed number etc., in the written statement. Unless the document was available on date of filing written statement, the possibility of making a mention about minute details would not arise. But, the petitioners/defendants did not file the document for one reason or the other, which are best known to them, and intending to introduce those documents as evidence without complying the mandatory requirement under Sub Rule 1A of Order 8 CPC. In such a case, the discretion exercised by the trial court cannot be faulted and the trial court exercised its jurisdiction in accordance with the principles laid down by the Apex Court and various High Courts referred to above. Therefore, I find no ground to interfere with the Order passed by the Court below while exercising power under Article 227 of the Constitution of India, which is supervisory in nature and such power

cannot be exercised at the whims and fancies of the Court and the main intention is only to have control over the subordinate Courts and do justice within their jurisdictional limits as per law, but not otherwise.

In view of my foregoing discussion, I find that the reason assigned by the petitioners for their failure in compliance of Sub Rule 1 of Rule 1A of Order 8 CPC is not just and reasonable to grant leave under Sub Rule 3 CPC, more particularly, non compliance of Sub Rule 2 CPC and filing of the documents at the fag end of the trial that too after 11 years. Consequently, the present petition is devoid of merit and deserves to be dismissed.

In the result, this Civil Revision Petition is dismissed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.



M. SATYANARAYANA MURTHY, J

Date: 05.01.2018
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HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY



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