

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

**CIVIL REVISION PETITION Nos.6029, 6047 and
6081 OF 2017**

COMMON ORDER :

These revision petitions are filed against the common order dated 09.10.2017 passed in IA.No.62/2017 filed under Section 151 CPC seeking to reopen the suit which stood posted for arguments, for the purpose of entertaining IA.No.63/2017 which was filed under Order XVIII Rule 17 of CPC seeking to recall the 2nd plaintiff (PW1) for the purpose of further evidence in respect of documents filed vide IA.No.64/2017 which was filed under Order VII Rule 14(3) of CPC. The Court below dismissed the said petitions.

Learned counsel for the petitioners/plaintiffs submits that the documents which the petitioners sought to be filed were in the custody of their Advocate who passed away and the said documents were traced out through advocate clerk, as such, the same could not be filed. He also submits that the documents sought to be filed by the petitioner pertain to proceedings in respect of suit schedule property under the A.P.Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 and that they are very much necessary for deciding the *lis* in the suit, but the trial Court by misconstruing the Judgments cited by the respondents, dismissed the application.

On the other hand learned counsel for respondents vehemently opposed the CRP stating that at the stage of reply

arguments, applications are filed and that on earlier occasion, already once PW1 was recalled, as such, no interference is called for at this stage.

Normally this Court would not entertain this type of revisions, but the fact remains that the documents sought to be filed are in the custody of the Advocate who passed away and that they could be traced through his clerk. The same was not denied in the counter affidavit filed to these applications.

This Court in ***John Santiyago and others v. Clement Dass and others***¹ at para 6 held as follows;

“I have given detailed, thoughtful and earnest consideration to the other submissions, the facts and the relevant proposition of law. The matter is still before the trial Court; and since the plaintiffs are required to prove the pleaded relationship, which was denied by the defendants, and as according to the plaintiffs the present document is a crucial and relevant document said to be containing a recital in regard to the disputed relationship and as according to the plaintiffs the said document is not a self serving document, in the well considered view of this Court, an opportunity to file such a document cannot be denied to the plaintiffs merely on the ground of delay. Be it noted that the law is well settled that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. In the instant case, neither the explanation for the delay can be termed as casual nor can the delay be termed as deliberate, in the facts and circumstances of the case. There are no circumstances to hold that the delay was deliberate and was on account of culpable negligence and *mala fides* on the part of the

¹ 2014 (2) ALD 184

plaintiffs. The action of the learned Counsel in filing the documents furnished to him by the plaintiffs after the completion of the evidence of the defendants cannot be termed *mala fide* and for the said act of the Counsel, the plaintiffs cannot be penalized.”

This Court would not have entertained the plea of the petitioners, but, only considering the fact that the documents were not in the custody of the petitioner and that the same were in the custody of the Advocate who passed away and could be traced by the Advocate Clerk and also considering the aforesaid Judgment relied on by the petitioner, the impugned order dated 09.10.2017 passed in IA.No.62, 63 and 64 of 2017 in OS.No.125/2002, is set aside. However, since the petitioner is at fault in filing the documents belatedly the petitioner shall pay an amount of Rs.20,000/- towards costs to the respondents 1 to 4 by drawing DD in the name of 1st respondent and furnish the same to the counsel for respondents within a period of two weeks from the date of receipt of a copy of this order and submit proof of the same before the Court below. On such proof, the Court below shall proceed further. If costs are not paid to the respondents, the CRP shall stand dismissed automatically.

Accordingly, the CRP is allowed.

As a sequel thereto, miscellaneous applications, if any, pending in the CRP, shall stand closed.

A.RAJASHEKER REDDY, J

21.02.2018
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