

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHARA PRADESH

**CIVIL REVISION PETITION Nos.6164, 6171, 6172 & 6174 of
2017**

Between:

Uni-Sankya Limited and three others

.....Petitioners

And

Ashok Kumar Jaiswal

.....Respondent

Date of Judgment pronounced on : 04-01-2018

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

*** HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

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< **GIST:**

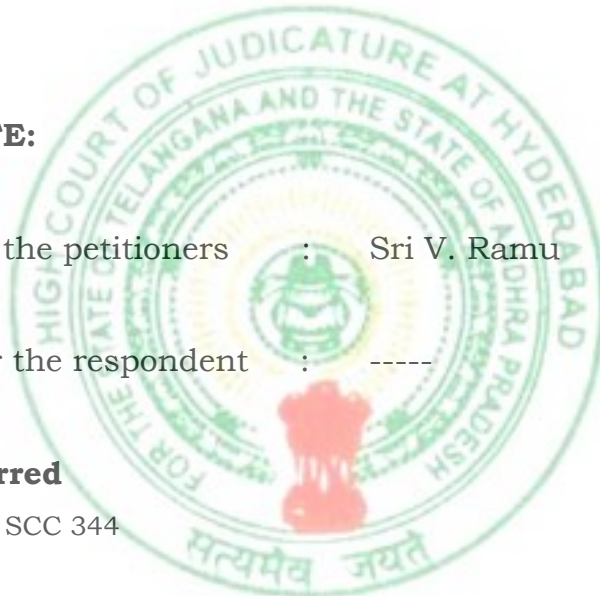
> **HEAD NOTE:**

! Counsel for the petitioners : Sri V. Ramu

^ Counsel for the respondent : -----

? **Cases referred**

1. 2005 (6) SCC 344



HON'BLE DR. JUSTICE B. SIVA SANKARA RAO
CIVIL REVISION PETITION Nos.6164, 6171, 6172 & 6174 of
2017

COMMON ORDER:

The 4 revision petitioners in all the 4 revisions by names UNI-Sankyo Limited represented by its Managing Director, VVS Somayajulu, Head Human Resources and Administration, The Deputy General Manager (Fermentation) and G. Suryam, Advocate, Enquiry Officer, are defendants in O.S.No.316 of 2009. The suit filed by sole plaintiff A.K. Jaiswal (Production Manager of the 1st defendant) was for the relief of declaring the enquiry proceedings conducted against him on the basis of charge sheet dated 29.11.2008 is without jurisdiction, illegal and null and void and plaintiff is entitled to the monetary benefits of salary from September 2011 onwards and also for grant of perpetual injunction restraining defendants from proceeding with the enquiry pursuant to the charge sheet supra and also for mandatory injunction directing the defendants to pay salary from September 2008 to February 2009 with attendant benefits of Rs.1,20,509/- and also to continue to pay the salary thereafter at Rs.21,556/- per month net after deduction from the month of March 2009 onwards. The defendant Nos.2 & 4 filed written statement that was adopted by defendant Nos.1 & 3 in disputing the very entitlement of suit claim and maintainability of the suit for the several reliefs supra sought for.

2. Pending suit, the plaintiff filed I.A.No.91 of 2011 for amendment of the plaint by adding in Para 12(a) and 14(a) and in the prayer portion at Para (a)(a). The amendment petition after

contest was allowed. CRP.No.653 of 2012 filed by the defendants impugning the said amendment order of the trial Court and the revision was ended in dismissal at the stage of admission on 15.02.2012. Further the plaintiff filed pending the suit, I.A.No.235 of 2009 earlier for temporary injunction restraining respondents from proceeding further with the departmental enquiry and also filed I.A.No.236 of 2009 for mandatory injunction directing the defendant to pay Rs.1,20,509/- towards salary from September 2008 to February 2009 and continue to pay net salary of Rs.21,556/- per month after deduction from the month of March 2009. I.A.No.236 of 2009 was partly allowed in directing to decide as to nature of the leave the petitioner is entitled and the quantum of pay and allowances he is entitled. The injunction petition in I.A.No.235 of 2009 was dismissed with costs. Further the plaintiff filed I.A.No.755 of 2010 restraining the defendants from passing any final order against the petitioner pursuant to the report submitted by the enquiry officer and that injunction petition in I.A.No.755 of 2010 was ended in dismissal on 26.10.2010. So far as the temporary injunction petition in I.A.No.235 of 2009 dismissal order concerned, CMA.No.191 of 2009 was filed where the entire material record of the trial Court was called for. The CMA was ultimately not pressed and dismissed on 13.07.2015. So far as the mandatory injunction in I.A.No.236 of 2009 allowed in part concerned, CMA.No.189 of 2009 was filed and that was dismissed on 20.08.2015 where the original record was sent to the appellate Court. While so, so far as I.A.No.91 of 2011 amendment petition of the plaintiff that was allowed and CRP.No.653 of 2012 dismissed at the stage of

admission on 15.02.2012 concerned, the defendants filed memo in SR.No.451 of 2012 dated 01.02.2012 informing about the deposit of court fees for the amended relief vide challan No.2810 dated 20.12.2011 for Rs.411/- and informed the Court about original plaint sent for in CMA.No.191 of 2009 by the lower appellate Court-cum-II Additional Chief Judge, and it is after receiving of the original plaint from the appellate Court to carry the amendment. It appears the trial Court did not call for the original plaint to carry the amendment that was sent as called for in CMA.No.191 of 2009. The plaintiff cannot be compelled to perform the impossibility for carrying the amendment in the original plaint for the original plaint is not with the trial Court nor there is a direction to the plaintiff to approach the lower appellate Court to carry the amendment in the original plaint therein and file neat copy therein, to give effect to the carrying of the amendment within 14 days contemplated which otherwise if a party obtained an order for leave to amendment, it is not amended within the time limited for the purpose and if not time limited within 14 days from date of order, he shall not be permitted to amend after expiry of such limited time or of such 14 days as the case may be, unless the time is extended by the Court. The very provision says time can be extended by the Court. It is not even stated the time for extension shall be limited for 30 days contemplated by Section 148 CPC. Leave about irrespective of Section 148 CPC prescribes in extension of time for maximum 30 days as held by the Apex Court in **Salem Advocate Bar Association Vs. Union of India**¹, the Court can extend the

¹ 2005 (6) SCC 344

time invoking Section 151 CPC beyond 30 days. As referred supra, unless the original plaint is received, the plaintiff cannot carry the amendment and the question of compelling to carry the amendment within 14 days does not arise, for the original plaint is not with the trial Court, but with the appellate Court against the injunction order in I.A.No.235 of 2009 in CMA.No.191 of 2009.

3. In the factual background, I.A.No.350 of 2016 is filed by the plaintiff invoking Order VI Rule 18, Sections 148 and 151 CPC to extend the time in carrying the amendment of the original plaint pursuant to the order dated 02.12.2011 in I.A.No.91 of 2011 supra of 1557 days for the period taken is not for his fault, but for the original plaint is with the lower appellate Court and not before the trial Court to carry the amendment. Even the main suit was adjourned for want of the original records with the trial Court undisputedly. It is only the original plaint with original record of the trial Court received from the lower appellate Court on 18.11.2015 as per the record and the trial Court posted the matter to 11.12.2015 for commencement of trial. It was therefrom posted to 23.12.2015 and again to 07.01.2016. It is at that stage, plaintiff filed an application in I.A.No.42 of 2016 under Order XIV Rule 5 CPC for recasting of issues and framing of additional issues pursuant to the amendment. The Court noticed the recasting of issues for the amended pleadings concerned does not arise from amendment allowed not carried so far. The amendment was subsequently on 16.03.2016 carried out without passing specific order by the Court. The docket order of the trial Court dated 18.04.2016 therefrom shows that the learned

counsel for plaintiff carried out the amendment and filed neat copy and deposited the court fee challan without leave of the Court and the Court noticed the same and the Court therefrom directs for written of the neat copy and to strike out the amendment carried out by the plaintiff's counsel on 16.03.2016 since it is without leave of the court. Aggrieved by it, the plaintiff filed CRP.No.2853 of 2016 against docket order of the Court dated 18.04.2016 and the CRP after contest on 09.08.2016 was allowed by setting aside the trial Court's direction on the docket order dated 18.04.2016 and by directing the plaintiff to file appropriate application before the trial Court by assigning reasons and trial Court to consider whether the application for delay is justified in the failure to carry out the amendment earlier within the stipulated period of Order VI Rule 18 CPC after hearing both sides. It is pursuant to which IA.No.350 of 2016 was filed by the plaintiff on 23.08.2016. It is after contest, the trial Court allowed the same on 27.02.2017 subject to payment of costs of Rs.6,000/- by the plaintiff to the other side and if failed to pay the costs on or before 10.03.2017 petition stands be dismissed. Aggrieved by said order dated 27.02.2017, the defendants filed CRP.No.6164 of 2017 which is one out of 4 present revisions supra.

4. The order of the lower Court in allowing IA.No.350 of 2016 filed to condone the delay of 1557 days that was opposed by the respondents, ultimately in allowing reads that with challan dated 20.12.2011 for Rs.411/- plaintiff did not deposited the amount, but for in July 2016. Though there is gross negligence on the part of the plaintiff in this regard, the petition can be

allowed by imposing costs of Rs.6,000/- from reasons assigned to extend the time.

5. From the above background CRP.No.6171 of 2017 concerned, it is against the order in I.A.No.324 of 2017 dated 03.10.2017 in I.A.No.350 of 2016 supra that petition of plaintiff is to restore I.A.No.350 of 2016 by setting aside conditional dismissal order for non-deposit of the costs directed in I.A.No.350 of 2016 by order dated 27.02.2017, on or before 10.03.2017. Thus under Order IX Rule 7 r/w Section 151 CPC, I.A.No.324 of 2017 is filed. It is wrongly mentioned instead of Order IX Rule 9 as Order IX Rule 7 CPC since it is for restoration and not to set aside the exparte order. That petition after contest was allowed on 03.10.2017 subject to costs of Rs.500/- by 06.10.2017 failing which stands be dismissed. The order in I.A.No.324 of 2017 reads that on the date of passing orders he was present in the morning and later left to appear for LLB examination and on verification later the proceedings of the Court not available in internet and on 10.03.2017 he could not attend as suffering from ill-health, but subsequently came to know of the orders passed in I.A.No.350 of 2016 and its dismissal for non-compliance which is not willful. However, the respondents/defendants contested as it is deliberate and willful act and cannot be condoned much less by extension of time or to restore the dismissal order for non-compliance of conditions of the order in I.A.No.350 of 2016. It is observed that as petitioner/plaintiff is ready to pay the amount and gives his reason for earlier non-appearance felt it just to give one more opportunity subject to costs of Rs.500/- payable by 06.10.2017.

6. CRP.No.6174 of 2017 is maintained against order dated 03.10.2017 in I.A.No.323 of 2017 in I.A.No.350 of 2016 with a prayer to extend time for payment of costs of Rs.6,000/- by the conditional order dated 27.02.2017 since not paid in time. It is after contest allowed on 03.10.2017 subject to costs of Rs.500/- payable by 06.10.2017 with selfsame observations of the order in I.A.No.324 of 2017. Thus I.A.Nos.323 & 324 of 2017 covered by separate orders in allowing, it impugned in CRP.Nos.6171 and 6174 of 2017 is against said order extending time fixed by the order in I.A.No.350 of 2016.

7. CRP.No.6172 of 2017 filed is against order in I.A.No.191 of 2017 dated 03.10.2017 in I.A.No.42 of 2016. It was the application filed under Section 340 Cr.P.C. r/w Section 151 CPC by the defendants against the plaintiff and the advocate by name Suryam for conducting enquiry to prosecute under offences affecting administration of justice. The same was since dismissed, the present revision is filed.

8. Heard learned counsel for the revision petitioners/defendants in all the 4 matters and taken as heard the respondent/plaintiff since notice sent returned as unclaimed is sufficient service.

9. Though in the application in I.A.No.191 of 2017 advocate by name Suryam as respondent No.2 was shown before the lower Court, in the revision that advocate's name is deleted from the array, but for against plaintiff as sole respondent.

10. Before coming to the correctness of the dismissal order in I.A.No.191 of 2017, coming to the other 3 revisions covered by the impugned order in I.A.No.350 of 2016 and the extension of the time fixed in allowing that petition covered by the orders in I.A.Nos.323 & 324 of 2017 as referred supra though the trial Court record called for in CMA.No.191 of 2009 after its disposal sent back to the trial court that was received on 18.11.2015, the I.A.No.350 of 2016 filed was on 23.08.2016. As can be seen from the order of the lower Court in allowing I.A.No.350 of 2016 it is crystal clear of the docket order dated 18.04.2016 is very clear of without permission of the Court the plaintiff and the counsel carried out the amendment without extension of time originally granted in I.A.No.91 of 2011 dated 02.12.2011 and he cannot be allowed to do so and that order is liable to be set aside by return of the neat copy and by deleting the amendment carried out.

11. No doubt undisputedly against that docket order, CRP.No.2853 of 2016 filed and that was allowed on 09.08.2016 giving liberty to the petitioner by setting aside that docket order, to file application for extension. Pursuant to which only, I.A.No.350 of 2016 filed on 23.08.2016. As referred supra from the expressions of the Apex Court in **Salem Advocate Bar Association II** supra even Section 148 CPC gives 30 days maximum time for extension. Section 151 CPC enables extension beyond that time and the plaintiff within 14 days could not carry out the amendment as per orders in I.A.No.91 of 2011 dated 02.12.2011 because of the CMA.No.191 of 2009 filed against the injunction order in I.A.No.235 of 2009. The original plaint once not available before the trial Court because the appellate Court

called for since its return back the question of carrying amendment does not arise for the plaintiff cannot be compelled to perform impossible act. Further receiving of the record from the lower appellate Court by the trial Court is always not known to the parties unless it is reflected by any specific docket direction by the trial Court of record received. The trial Court it appears posted the matters after record received to get ready for trial and there was no direction even by the trial Court to carry the amendment by payment of deficit court fee and without that direction even the plaint cannot be rejected from reading of Order VII Rule 11 Clauses (b) & (c) of CPC apart from the power of the Court to collect deficit court fees is always open including to say any additional payment of court fees till pronouncement of judgment including with reference to Section 11 of AP Court Fess and Suit Value Act, 1956. Once such is the case, the 14 days or within such time to be fixed contemplated by Order VI Rule 18 CPC not the be all for the very provision speaks the Court got the power to extend the time and the factual scenario after receiving of plaint copy the trial Court should have been fixed a date and even not plaintiff could not have been resorted to do the act of carrying the amendment without prior leave of the Court as rightly observed in the docket order of the trial Court dated 18.04.2016 of what the plaintiff did on 16.03.2016. However, once this Court another Bench set aside the docket order in CRP.No.2583 of 2016 permitting to file application seeking extension of time to consider on own merits in the factual scenario; with reference to the expression of **Salem Advocate Bar Association II** supra once the Court got the power that too

allowed I.A.No.350 of 2016 subject to costs of Rs.6,000/- on 27.02.2017 to comply by 10.03.2017 there is nothing to interfere with that order and thereby the CRP.No.6164 of 2017 is liable to be dismissed.

12. Now coming to CRP.No.6171 & 6174 of 2017 it is for the non-payment of the costs of Rs.6,000/- by 10.03.2017 for the extension sought under the same analogy once allowed subject to costs of Rs.500/- there is nothing to interfere thereby these 2 revisions are liable to be dismissed but for to say any additional written statement to the plaint amendment if not filed is to file within one week from date of receipt of the order, as the procedural law is handmaid but not mistress of justice, so that these revisions accordingly can be disposed off.

13. Further coming to CRP.No.6172 of 2017, impugned dismissal order of the Court on the application of the defendants under Section 340 CrPC for what the plaintiff stated in I.A.No.42 of 2016 as if carried the amendment allowed in I.A.No.91 of 2011 for the reasons supra including from the trial Court's docket order dated 18.04.2016 is not correct for not with the leave of the Court and once that statement on oath requires to be viewed by the court in either way, the summary dismissal of the I.A.No.191 of 2017 by the lower Court despite the observation from Paras 7 to 10 of the impugned order that material on record does not show respondents intentionally filed said false application and no case made out to proceed under Section 340 CrPC and of the view that it is not expedient in the interest of justice to enquire into the matter, is unsustainable but for to discuss on the facts with

reference to the statement on oath is false or not also with reference to the docket order dated 18.04.2016. Thereby the dismissal order is set aside and the I.A.No.191 of 2017 is restored to the file of trial Court to enquire into the matter along with the main suit to pass appropriate orders thereon.

14. All this happened undisputedly from original record not available with trial Court since called for by the superior Court in appeal or revision as the case may be. It is in this context needful to mention that from the factum of calling for original records and keeping at appellate/revision courts despite entire records are not necessary in such appellate/revision courts or it may be returned after taking Xerox copies of relevant material to the trial court to proceed with the suit or original petition or other matters as the case maybe. No doubt it may be a practical difficulty from the cumbersome process of calling for records and taking Xerox copies and returning original records rather calling for Xerox copy of the original records.

15. Having regard to the above, ends of justice may subserve by giving any general direction to the lower courts to send only Xerox copy of records where main matter is pending to proceed with, unless specifically any original document or particular record in original is called for, so that it will not hamper proceedings before lower court from calling of records which practically staying the lower court proceedings without any order of stay. The same was also observed by the Division Bench of this Court in W.P.No.2333/1996, direction dt.7-6-2007.

16. Registry is directed to place the matter before the Hon'ble the Acting Chief Justice to consider the need of giving any general circular instructions to the subordinate courts to send only Xerox copy of records where main matter is pending to proceed with, unless specifically any original document or particular record in original called for, so that it will not hamper proceedings before lower courts from calling of original records which practically staying the lower court proceedings without any order of stay.

17. Accordingly and in the result, the CRP.No.6172 of 2017 is allowed in part to decide with main suit the I.A.No.191 of 2017 since restored and CRP.Nos.6171 & 6174 of 2017 are disposed off and CRP.No.6164 of 2017 is dismissed.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 04.01.2018

Note: L.R. Copy to be marked

(B/o)

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