

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION NO.7182 OF 2017

Date: 01.02.2018

Between:

G.Sarangapani S/o Rajaiah,
Aged 43 years, Occu: Business,
H.No.6-8-72, Basithnagar,
Hanamkonda, Warangal dist.

..... Petitioner/
plaintiff

and

The Head Master (Gazetted) Basithnagar,
Govt. High School, Warangal and two
others.

..... Respondents/
defendants



The Court made the following:

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ORDER:

Plaintiff filed the suit in O.S.No.394 of 2007 on the file of II Additional Senior Civil, Warangal, praying to direct the defendants to pay an amount of 2,74,000/- with interest @ 24% per annum and costs of the suit.

2. Briefly noted, plaintiff contends that arrears of rent due were not paid for the period from 01.09.2006 to 30.06.2007 and premises were damaged, causing huge loss to the plaintiff.

3. In the written statement filed by the defendants, they asserted that rent was paid up to 31.08.2006 and premises was vacated immediately. Thereafter, no rental amount is due. In the written statement, they have also mentioned the proceedings through which the amount was paid. However, no documents were filed along with written statement. Recording of evidence on behalf of plaintiff was completed and when the matter was coming up for the evidence of defendants, on behalf of defendants, I.A.No.624 of 2017 was filed praying the Court to condone the delay in filing the list of documents sought to be presented and sought leave of the Court to file the documents. This application was hotly contested by the plaintiff. By order, dated 31.10.2017, against which this revision is filed, the trial Court allowed the said application.

4. Learned counsel for petitioner/plaintiff contends that it is mandatory for the defendants to furnish list of documents, on which reliance is placed, along with written statement and if documents are not filed, it is mandatory for the defendants to

explain reasons for delay in filing the documents. In order to invoke the jurisdiction of trial Court under Order VIII Rule 1-A(3) of CPC, there must be clear averment why list of documents could not be filed along with written statement, where as in the affidavit filed in support of I.A., vague averments are made. They have not stated how the documents could not be traced earlier; they have not sought leave of the Court to condone the delay in filing the documents and, therefore, trial Court erred in allowing the application. In support of the contention, learned counsel for petitioner/plaintiff placed reliance on the decision of this Court in **Managing Director, APSRTC, Hyderabad and others vs. P.V.Surya Narayana**¹.

5. Learned Government Pleader appearing for respondents/defendants circulated copies of written statement and other documents. By pointing out the averments made in paragraph-3 in page no.3 of written statement, Government Pleader submits that it was categorically asserted by the defendants that rent was paid up to 31.08.2006 and proceeding number was also mentioned. However, the document in proof of payment could not be traced immediately in school records as the same was mixed up with other records and school was shifted within short time thereafter. In the affidavit filed in support of the application, it is clearly stated that documents mixed up with other files in the office and could not be traced. Thus, it cannot be said that there was no due diligence.

¹ 2017 (4) ALD 733

6. Learned counsel for petitioner/plaintiff further contends that the deponent is not the author of documents, which are sought to be presented whereas, provision in Section 65 of the Indian Evidence Act is not complied.

7. Learned Government Pleader further submits that the documents sought to be presented are public documents; the incumbent Head Master of the School is competent to depose to the affidavit and, therefore, it complies provisions of Indian Evidence Act.

8. Having regard to the submissions made, issue for consideration is whether the trial Court erred in entertaining the I.A.N.624 of 2017.

9. As fairly submitted by both counsel, matter is coming up for recording of evidence. It is no doubt true that defendants are required to file list of documents on which reliance is placed along with written statement and unless the Court is persuaded to grant leave, no document can be presented subsequently. The defendants are the official respondents and the issue concerns occupation of property of the plaintiff for running a Government school. What is stated in the affidavit filed in support of the application needs to be considered in the above background. According to the deponent, relevant documents evidencing payment of rent and other aspects were mixed up with other files and, therefore, could not be traced and soon after they were traced, they sought leave to present.

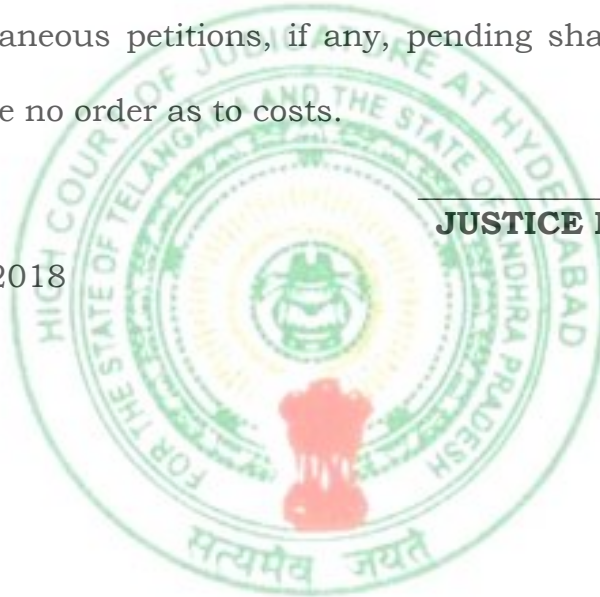
10. In the facts of this case, the decision relied upon by the learned counsel for petitioner/plaintiff does not come to his aid.

11. Suffice to note at this stage, the reason assigned by the respondents, which was accepted by the trial Court, cannot be said as not valid and trial Court erred in exercising the discretion in allowing the application filed by the defendants. In the facts of this case, it cannot be said that trial Court exceeded its jurisdiction, warranting interference by this Court. Civil Revision Petition is accordingly dismissed.

Miscellaneous petitions, if any, pending shall stand closed.
There shall be no order as to costs.

Date: 01.02.2018
kkm

JUSTICE P.NAVEEN RAO



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