

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP. No.1661 of 2018

ORDER:

Heard both sides.

2. This Revision is filed under Article 227 of the Constitution of India challenging the order dt.30.01.2018 passed in I.A. No.1435 of 2016 in Appeal Suit No.76 of 2015 of the Principal District Judge, Warangal.

3. The said appeal was filed by the petitioner herein challenging the judgment and decree dt.14.09.2015 in O.S. No.182 of 2000 on the file of the I Additional Senior Civil Judge at Warangal.

4. Pending the said appeal, he filed I.A. No.1435 of 2016 under Order XLI Rule 27 CPC to receive certain documents. He alleged that several suits had been filed by the Principal borrower/JDR No.1 in various Courts in Warangal, and having succeeded in the said suits he failed to repay the loan amount borrowed from the respondent.

5. On 31.02.2018 the Court below dismissed the said application while keeping the appeal pending, stating that the documents sought to be filed by the petitioner did not pertain to any subsequent event, but only to prove the contention that judgment debtor No.1 had enough resources and it would not fall within the parameters of Order XLI Rule 27(1) CPC.

6. Assailing the same this Revision is filed.

7. Counsel for the petitioner contended that the application to receive additional evidence can only be taken up by the appellate Court at the time of hearing the appeal on merits so as to find out whether the documents or

evidence sought to be adduced has any relevance or bearing on the issues involved and the said application cannot be decided *de hors* the appeal.

8. He placed reliance on the judgments of the Supreme Court in **State of Rajasthan Vs. T.N.Sahani and others¹** and **Malayalam Plantations Ltd., Vs. State of Kerala and Another²**.

9. In **Malayalam Plantations** (2 supra) the Supreme Court held that if any petition is filed under Order XLI Rule 27 CPC in an appeal it is incumbent on the part of the appellate Court to consider at the time of hearing of the appeal on merits so as to find out whether the documents or evidence sought to be adduced have any relevance or bearing in the issues involved.

10. In **State of Rajasthan** (1 supra) the Supreme Court at para 4 held as under:

“4. It may be pointed out that this Court as long back as in 1963 in K.Venkataramaiah Vs. Seetharama Reddy (AIR 1963 SC 1526) pointed out the scope of unamended provision of Order 41 Rule 27(c) that though there might well be cases where even though the court found that it was able to pronounce the judgment on the state of the record as it was, and so, additional evidence could not be required to enable it to pronounce the judgment, it still considered that in the interest of justice something which remained obscure should be filled up so that it could pronounce its judgment in a more satisfactory manner. This is entirely for the court to consider at the time of hearing of the appeal on merits whether looking into the documents which are sought to be filed as additional evidence, need be looked into to pronounce its judgment in a more satisfactory manner. If that be so, it is always open to the court to look into the documents and for that purpose amended provision of Order 41 Rule 27(b) CPC can be invoked. So the

¹ 2001 (10) SCC 619

² AIR 2011 SC 559

application under Order 41 Rule 27 should have been decided along with the appeal. Had the Court found the documents necessary to pronounce the judgment in the appeal in a more satisfactory manner it would have allowed the same; if not, the same would have been dismissed at that stage. But taking a view on the application before hearing of the appeal, in our view, would be inappropriate. Further the reason given for the dismissal of the application is untenable. The order under challenge cannot, therefore, be sustained. It is accordingly set aside. The application is restored to its file. The High Court will now consider the appeal and the application and decide the matter afresh in accordance with law.”

11. From the above it is clear that such application has to be decided along with the appeal and cannot be decided independently before the appeal is decided. The principle laid down in these two decisions has not been disputed by the counsel for the respondent

12. Therefore, the Court below ought not to have decided I.A. No.1435 of 2016 separately and independently before it took up the appeal for consideration.

13. Accordingly, this Revision is allowed; Order dt.30.01.2018 passed in I.A.No.1435 of 2016 in A.S. No.76 of 2015 of the Principal District Judge at Warangal is set aside; the said I.A. is remanded back to the said Court for consideration at the time of hearing the appeal A.S. No.76 of 2015 by it. There shall be no order as to costs.

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 30.07.2019
LSK



