

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.5580 of 2018

ORDER :

Heard both sides.

2. This Civil Revision Petition is filed challenging the order dt.13.03.2018 passed in Interlocutory Application No.147 of 2017 in Original Suit No.867 of 2013 on the file of XVIII Additional Senior Civil Judge, City Civil Court, Hyderabad.

3. The petitioners herein are defendant nos.1 and 2 in the above suit.

4. The 1st respondent filed the said suit against petitioners and 2nd respondent for recovery of a sum of money on the ground that a cheque issued by 1st petitioner got dishonoured when presented by 1st respondent.

5. Along with the plaint, the 1st respondent filed only sixteen (16) documents.

6. After Written Statement was filed, the 1st respondent filed Interlocutory Application No.147 of 2017 under Order VII Rule 14 (3) read with Section 151 of Civil Procedure Code, 1908 to receive document Nos.17 to 62 mentioned in the list of documents annexed to the said Interlocutory Application.

7. In the affidavit filed in support of the said application, the 1st respondent contended that it had filed a complaint under Section 138 of Negotiable Instruments Act, 1881 against 1st respondent which was taken on file as C.C.No.378 of 2012 by the XV Special Magistrate, Errumanzil, Hyderabad; that it was dismissed on 18.09.2013; that thereafter, he had filed Criminal Appeal No.853 of 2013 before the VIII Metropolitan Sessions Judge, Nampally, Hyderabad which is pending for disposal, and original documents were filed in the said case; that the original documents filed in the Criminal Appeal No.853 of 2013 have been taken back by it in Criminal Miscellaneous Petition No.272 of 2017, and they are being filed in this suit; that the documents now sought to be filed along with Interlocutory Application No.147 of 2017 were thus not available with the 1st respondent and so could not be filed earlier and they should be received now by the Court.

8. Counter-affidavit was filed by 2nd petitioner on behalf of himself and 1st petitioner opposing the said application and pointing out that the documents at Serial Nos.17 to 62 have not been filed in the C.C.No.378 of 2012 at all; that they were filed in Criminal Miscellaneous Petition No.1411 of 2014 on 15.05.2014 in the Criminal Appeal No.853 of 2013; that the said application was allowed by the Court of the Metropolitan Sessions Judge, and petitioners have filed Criminal Petition No.546 of 2015 and obtained stay of proceedings in the Criminal Appeal No.853 of 2013.

9. By order dt.13.03.2018, the Court below allowed Interlocutory Application No.147 of 2017. The Court below held that since all the documents including document Nos.17 to 62 have been filed in the Criminal Court, and they were taken back by 1st respondent and are being filed in this suit along with Interlocutory Application No.147 of 2017, they can be received. It opined that 1st respondent was not in possession of document Nos.17 to 62 earlier at the time when the plaint was presented by 1st respondent.

10. Assailing the same, the present Civil Revision Petition is filed.

11. The material on record indicates that document Nos.17 to 62, which were sought to be filed by 1st respondent in Interlocutory Application No.147 of 2017 were, in fact, not filed in C.C.No.378 of 2012 when it was pending before the XV Special Magistrate, Errumanzil, Hyderabad and that they were filed only in Criminal Appeal No.853 of 2013 on 15.05.2014 through Criminal Miscellaneous Petition No.1411 of 2014.

12. All these document Nos.17 to 62 now sought to be filed along with Interlocutory Application No.147 of 2017 pertain to the period 1996 to 2010, and they were very much available with 1st respondent when it filed the suit Original Suit No.867 of 2013 on 29.04.2013.

13. For reasons best known to 1st respondent, they were not filed by 1st respondent along with the plaint.

14. As stated above, they were also not filed in C.C.No.378 of 2012 by 1st respondent.

15. There is no valid explanation being offered by 1st respondent as to why the 1st respondent, though having custody of the said documents, could not file them along with plaint. In the absence of such valid explanation, the Court below ought not to have allowed Interlocutory Application No.147 of 2017.

16. Therefore, the order dt.13.03.2018 passed in Interlocutory Application No.147 of 2017 in Original Suit No.867 of 2013 on the file of XVIII Additional Senior Civil Judge, City Civil Court, Hyderabad is set aside; and the said Interlocutory Application No.147 of 2017 is dismissed.

17. Accordingly, the Civil Revision Petition is allowed. No order as to costs.

18. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 27.06.2019

Ndr/*