

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHA RAO

C.R.P.No.7142 OF 2018

ORDER:

(Per Sanjay Kumar, J)

1 This Civil Revision Petition arises out of the order dated 11.6.2018 passed by the learned Judge, Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad (for brevity, 'the Commercial Court'), in I.A.No.419 of 2017 in C.O.S.No.160 of 2017. The petitioners are defendants 1 and 2 in the suit. The said suit was filed by respondent 1 herein seeking cancellation of registered Agreement-cum-General Power of Attorney dated 18.3.2010 and a direction to the defendants to deliver possession of the suit schedule property to him. He also sought mesne profits @ Rs.1,50,000/- per month for illegal use and occupation of the said property by the defendants.

2 Initially, the suit was filed only against three defendants, viz., the petitioners and respondent 2 herein. However, the plaintiff claimed that defendant 1 sold the suit schedule property under sale deed dated 13.4.2012 to his wife, defendant 2, and their son, Dr.P.Raja Rami Reddy. He therefore filed I.A.No.419 of 2017 in the suit under Order I Rule 10(2) & Order XXII Rule 4(2) r/w Section 151 CPC to implead Dr.P.Raja Rami Reddy, respondent 3 herein, as defendant 4 in the suit. He also sought various consequential amendments in his suit plaint. By the order

dated 11.6.2018, the Commercial Court allowed the I.A. Aggrieved, defendants 1 and 2 in the suit are before this Court.

3 Heard Sri M.V.Subba Reddy, learned counsel for the petitioners/defendants 1 and 2, and Sri Rakesh Sanghi, learned counsel for respondent 1/plaintiff. Respondents 2 and 3 are shown as not necessary parties to this Revision Petition.

4 Parties shall hereafter be referred to as arrayed in the suit.

5. We may first note that Rule 28 of the Civil Rules of Practice and Circular Orders, 1980, prescribes that when an application for amendment is made under Order I Rule 10 CPC or under Order XXII of CPC, such an application should contain a prayer for all consequential amendments. The Court has to reject such an application if it is not in accordance with the law or these Rules.

6 We find that I.A.No.419 of 2017 was filed in C.O.S.No.160 of 2017 as per due procedure, as the plaintiff not only sought impleadment of a third party under Orders I and XXII CPC, but also asked for consequential amendments. He set out the said amendments at length not only in the affidavit filed in support of the I.A but also in the petition filed therein. Defendants 1 and 2 filed a counter contesting the I.A asserting that some of the amendments sought could not be termed to be consequential. They also alleged that proposed paragraph No.III (16) could not be permitted as it was contrary to Order VI CPC.

7 From a cursory perusal of the order dated 11.6.2018, presently under revision, we find that the Commercial Court completely lost sight of the consequential amendments sought and the resistance thereto. So much so that not even a mention was made in the body of the order about the consequential amendments. The Commercial Court baldly held that the petition was allowed, while observing that the proper party was added as defendant 4, subject to payment of Court-fee.

8 Sri M.V. Subba Reddy, learned counsel, would state that he has no objection to impleadment of the proposed party but as the order under revision is completely silent about the consequential amendments but the same have been carried out, as the petition was allowed in entirety, he has a grievance.

9 We find merit in this submission. The order under revision does not even advert to the consequential amendments sought by the plaintiff and the contentions of defendants 1 and 2 in the context thereof. Without adverting to both, the Commercial Court ought not to have allowed the petition in its entirety. All the more so, when the Commercial Court seems to have completely overlooked the later part of the prayer in the IA, running into three pages, and baldly allowed it, only on the strength of the initial prayer with regard to impleadment of the proposed party.

10 In the result, we are of the opinion that the order under revision cannot be sustained and the same is accordingly set

aside. I.A.No.419 of 2017 is remitted to the file of the Commercial Court for consideration afresh on merits.

11 As Sri M.V.Subba Reddy, learned counsel, states that he has no objection to impleadment of the proposed party, the Commercial Court shall concentrate upon the later part of the prayer pertaining to the consequential amendments sought by the plaintiff and the opposition thereto. We make it clear that we have not gone into the merits of the consequential amendments sought and it is for the Commercial Court to consider the issue on its own merits and in accordance with law.

12 Sri Rakesh Sanghi, learned counsel, states that Court-fee has already been paid in terms of the order under revision. If that be so, the same shall abide by the result of the I.A. and it shall be taken into consideration at the appropriate stage.

13 The Civil Revision Petition is allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J.

P.KESHAVA RAO, J.

Date: 31.07.2019

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