

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.7152 of 2018

ORDER :

This Civil Revision Petition is filed by the petitioner herein assailing the order dt.22.11.2018 passed in I.A.No.5359 of 2018 in O.S.No.676 of 2012 on the file of Chief Judge, City Civil Court, Hyderabad.

2. The petitioner herein is plaintiff in the above suit which he filed for recovery of a sum of Rs.44,70,000/- from the respondents jointly and severally, and for subsequent interest at the rate of 12% per annum.

3. It was the case of petitioner in the suit that the 1st respondent is his brother-in-law; that they are doing business in tours and travels and also real-estate, and at the request of respondents he had lent a sum of Rs.24 lakhs as a loan; respondents had executed an agreement acknowledging the debt; and admitted the liability to repay it with interest at the rate of 15 % per annum. It was also contended that both the respondents had issued cheques for varying amounts which were dishonoured, and therefore, the petitioner had filed the suit.

4. Having received the summons in the suit, the respondents remained *ex parte*; and initially an *ex parte* decree was passed on 23.02.2016.

5. The respondents then filed I.A.No.4163 of 2016 under Section 5 of the Limitation Act, 1963 to condone the delay of (175) days in filing the application under Order IX Rule 13 of Civil Procedure Code, 1908.

6. The said I.A. was dismissed by the Court below on 20.06.2018.

7. Subsequently, the petitioner preferred Civil Revision Petition No.3931 of 2018. The said Civil Revision Petition was allowed setting aside the order dt.20.06.2018 passed in I.A.No.4163 of 2016 on condition of the respondent in the Civil Revision Petition No.3931 of 2018 depositing costs of the suit before the Trial Court.

8. Thereafter, the respondents filed written statement in the Court below on 15.02.2018.

9. In the written statement, for the first time, they raised a plea questioning the capacity of the petitioner to lend the money to them. They contended that petitioner did not state when and where the loan amount was provided by him to the respondents and he had no capacity to lend such a huge amount.

10. In the light of this plea taken for the first time in the Written Statement in February, 2018, the petitioner filed I.A.No.5359 of 2018 under Order VII Rule 14 of Civil Procedure Code, 1908 seeking leave to mark a Sale Deed dt.30.11.2006 under which he along with others purchased certain land for valuable consideration, to prove his capacity to lend the money to respondents.

11. Counter-affidavit was filed by respondents opposing this application on the ground that there was no mention in the plaint about this document, and in the chief-examination affidavit also the petitioner had not deposed about it as PW.1, before the *ex parte* decree was passed on 23.02.2016.

12. By order dt.22.11.2018, the Court below dismissed the said application relying on a decision of this Court in **Bolla Ajay Babu vs. Nalla Manikyamma**¹ wherein it was held that there should be a reference in the pleadings about a document for leave to be granted to receive a document at a belated stage. It also observed that the petitioner having filed a suit in the year 2012 had kept quiet without filing the said document till date.

13. Challenging the same, the present Civil Revision Petition is filed.

14. The counsel for petitioner contended that the order passed by the Court below cannot be sustained, and grave prejudice would be caused to petitioner by the said order. He pointed out that only when the respondents questioned his capacity to lend the money in the written statement filed by them in February, 2018, it became necessary for him to file the sale deed in question invoking Order VII Rule 14(3) of Civil Procedure Code, 1908; and that otherwise, there was no necessity for him to file the said document because the suit

¹ 2010 (1) A.L.D. 163

was for recovery of money, and cheques issued by respondents had been dishonoured.

15. The counsel for petitioner relied upon the following decisions, viz., **Bada Bodaiah and another v. Bada Linga Swamy and others**², **Cable Corporation of India, Ltd. vs. Sanghi Industries Ltd.**³, and **Lukka Srinivasa Rao *alias* Venkateswarlu vs. Lukka Sivaiah**⁴.

16. The counsel for respondents, on the other hand, refuted the said contentions and relied upon the following decisions, viz., **Ambica Quarry Works vs. State of Gujarat and others**⁵, **Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. and others**⁶ and **Bolla Ajay Babu vs. Nalla Manikyamma** (1 *supra*).

17. Normally, in a suit for recovery of money there would be no necessity to file documents to prove the capacity of plaintiff to lend money unless there is a pleading of the defendants denying his capacity to lend the money. When the suit itself was decreed *ex parte* without any contest by the respondents, it cannot not be said that there was a duty cast on the petitioner to file this sale deed and prove his capacity to lend the money or to make a mention about the sale deeds in his pleading. So, only when a Written Statement was filed by

² 2003 (1) A.P.L.J. 141 (H.C.)

³ 2003 S.C.C. Online A.P. 56

⁴ 2015 (6) A.L.D. 38

⁵ (1987) 1 S.C.C. Pg.213

⁶ (2003) 2 S.C.C. 111

respondents taking such a plea, there arose a necessity for petitioner to file the sale deed.

18. Order VII Rule 14 of Civil Procedure Code, 1908, permits a plaintiff to file documents which he could not file along with the plaint if he gives satisfactory reason for not producing the document along with the plaint and for filing it at a subsequent stage.

19. In **Bada Bodaiah and another** (2 supra), the learned Single Judge of this Court held :

“13. A reading of Rule 1 of Order XIII alone would show that the Court shall receive the documents produced on or before the settlement of issues if the copies thereof have been filed along with the plaint or written statement. The Court has no power to receive the documents produced subsequently. Further, Sub-rule (3) of Rule 14 of Order VII empowers the Court to give permission or leave to the plaintiff to produce documents at a subsequent stage of hearing of the suit. Order XIII Rule 1 and Order VII Rule 14(3) have to be read together harmoniously. Reading together would lead that if the plaintiff applies for permission or leave to produce documents to be received in evidence at the hearing of the suit which documents were not produced on or before settlement of the issues or at the time of production of the plaint, the Court has to exercise sound discretion having regard to the facts and circumstances of each case. Mere non-mention of the documents in the plaint or subsequent incidental or supplemental proceedings in the suit does not in any manner affect the power of the Court to grant leave to produce the documents at the subsequent stage. Non-mentioning of the documents sought to be produced at the subsequent stage is a curable defect. With leave of Court, which is condition precedent under Sub-Rule (3) of Rule 4 of Order VII read with Sub-Rule (1) of Order 13 to receive the documents, documents can be produced at the time of trial. But Order VII Rule 14 (3) being an exception to the Rule in Order VII Rule 14(1)

as well as Order XII Rule 1 (1) (2), the power to grant, must be exercised in rare cases and not in a routine manner.”

20. Thus, in the above case, the Court categorically took a view that mere non-mention of documents in the plaint or subsequent incidental or supplemental proceedings in the suit does not in any manner affect the power of the Court to grant leave to produce documents at the subsequent stage.

21. In **Bolla Ajay Babu** (1 supra), cited by the counsel for respondent, a contrary view has been expressed by this Court that in the absence of reference to the documents which are sought to be submitted in the pleadings, the petitioner cannot seek leave of the Court to receive such documents at the belated stage when the suit is coming up for further evidence on the side of plaintiff. The attention of the Court does not appear to have been drawn to the decision in **Bada Bodaiah and another** (2 supra) wherein this Court has categorically held that mere non-mention of the documents in the plaint would not affect the power of the Court to grant leave to produce the documents at the subsequent stage.

22. In **Cable Corporation of India, Ltd.** (3 supra), this Court has also taken the same view as in **Bada Bodaiah and another** (2 supra), and held that where trial has not yet started, evidence, which was not originally filed, can be received in exercise of the power of the Court under Order VII Rule 14 (3) or under Order VIII Rule 1-A of Civil Procedure Code, 1908, read with Company Court Rules. It further

observed that procedures are man-made, and procedure should not come in the way of advancement of justice, but should be a facilitator of justice.

23. This principle was also reiterated in **Lukka Sivaiah** (4 supra), wherein it was contended that if convincing reasons are provided then the Court can exercise its power under Order VII Rule 14(3) and receive documents even at a belated stage.

24. In the instant case also, as I mentioned above, there was no occasion for the petitioner to mention about his capacity to lend in the plaint, when there was no written statement on record initially questioning his capacity to lend. Only when the respondents were given opportunity to file written statement by the order passed by this Court in Civil Revision Petition No.3931 of 2018, and when they filed such a written statement in February, 2018 taking the said plea, it became necessary for the petitioner to lead rebuttal evidence and file the sale deed to establish his financial capacity.

25. The proposition that a document cannot be received in evidence if it is not referred to in the pleadings, in my considered opinion, is too broadly stated and would not apply in every situation and, particularly in a situation arising in the instant case.

26. Therefore, in the facts and circumstances of the case, it cannot be said that the petitioner had not made out a case for grant of leave to file the said document at a later stage.

27. In **Ambica Quarry Works** (5 supra) and **Bhavnagar University** (6 supra), the Supreme Court held that a decision of a Court / precedent is an authority for what it decides and not what can logically can be deduced therefrom; and the ratio of a decision should be understood in the fact situation of that particular case.

28. In this view of the matter, I hold that the Court below has committed serious error of jurisdiction in refusing to allow I.A.No.5359 of 2018.

29. Accordingly, the Civil Revision Petition is allowed. The order dt.22.11.2018 passed in I.A.No.5359 of 2018 in O.S.No.676 of 2012 on the file of Chief Judge, City Civil Court, Hyderabad is set aside; and the said I.A. is allowed. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 11.02.2019

Ndr/*