

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**THURSDAY, THE TWENTY SEVENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY**

PRESENT

THE HONOURABLE DR. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION NO: 1455 OF 2019

Petition under Article 227 of the Constitution of India, against the Order and Decree 01-04-2019 in I.A. No. 84 of 2019 in O.S. No.1000 of 2014 on the file of the Court of the XX Junior Civil Judge, City Civil Court, Hyderabad.

Between:

Smt. Dr. Jetti Vatsala Rani, W/o. S.N. Mohan Raj, aged about 52 years, Occ. Scientist, IICT, Hyderabad, Resident of H.No. Flat No. 204, Icons Gandhamall Residency, Raghavendra Colony, Kalyanapuri East, Uppal, Hyderabad- 500 035.

...REV. PETITIONER/PLAINTIFF

AND

1. Smt. M. Satyavathi, W/o. M. Ramalingam, aged about 55 years, Occ. Household, Resident of H. No. 23-4-256, Sultanshahi, Hyderabad.
2. M. Mahesh, S/o. M. Ramalingam, aged about 28 years, Occ. Not known to Plaintiff, Resident of H. No. 23-4-256, Sultanshahi, Hyderabad.
3. Smt. Allam Shobha Rani, W/o. late A. Manik Rao, aged about 55 years, Occ. Govt. Employee, Resident of H. No. 18-5-599/1, Aliabad, Hyderabad- 500 053.
4. Allam Bharat Kumar, S/o. late A. Manik Rao, aged about 36 years, Occ. Govt. Employee, Resident of H. No. 18-5-599/1, Aliabad, Hyderabad- 500 053.

...RESPONDENTS/DEFENDANTS

IA NO: 1 OF 2019

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings including trial of the suit in O.S. No. 1000 of 2014 on the file of the Learned XX Junior Civil Judge, City Civil Court, Hyderabad, pending disposal of the above CRP in the interest of justice

Counsel for the Petitioner: SRI A SURYANARAYANA

Counsel for the Respondent: No.1 SRI K SAIRAM MURTHY

Counsel for the Respondent: Nos.3 & 4 SRI P. NAVEEN KUMAR

Counsel for the Respondent: No.2 NONE APPEARED

The Court made the following: ORDER

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.1455 OF 2019

ORDER:

This revision, under Article 227 of the Constitution of India, is filed by the petitioner/plaintiff aggrieved by the order dated 01.04.2019 passed in I.A.No.84 of 2019 in O.S.No.1000 of 2014 by the XX Junior Civil Judge, City Civil Court, Hyderabad, whereby the application filed by the revision petitioner/plaintiff under Order XXIII Rule 1 read with Section 151 of CPC, seeking permission to withdraw the subject suit in O.S.No.1000 of 2014 and to file a fresh suit on the same cause of action with proper and effective reliefs, was dismissed.

2. Heard the learned counsel for both sides and perused the record.

3. Learned counsel for the revision petitioner/plaintiff would submit that the subject Interlocutory Application was filed to withdraw the suit in O.S.No.1000 of 2014 on the ground that there is a formal defect in the suit with regard to the possession over the suit schedule property. It is a material error committed by the revision petitioner as the revision petitioner did not gather true facts before filing of the suit. The revision petitioner wanted to take proper measures and file separate suit. Therefore, the revision petitioner sought withdrawal of the subject suit with a liberty to file fresh suit. To substantiate his contentions, learned counsel relied upon the decision reported in ***Pillakathuku Subbarathnam v. Executive Officer, Polathala***¹ and ultimately prayed to allow the revision petition as prayed for.

¹ 2005(5) ALD 75

4. On the other hand, learned counsel for the respondents/defendants would submit that there was no formal defect. There are no circumstances to grant liberty to the revision petitioner to file a fresh suit. The Court below is justified in declining to grant the relief as sought for by the revision petitioner and ultimately prayed to dismiss the revision petition.

5. In view of the above submissions made by both sides, the point that arises for determination is:

"Whether the impugned order dated 01.04.2019 passed in I.A.No.84 of 2019 in O.S.No.1000 of 2014 by the XX Junior Civil Judge, City Civil Court, Hyderabad, is liable to be set aside?"

6. **POINT:** In *Pillakathuku Subbarathnam's* case (supra), the contention put-forth on behalf of the petitioners therein was that the suit was not properly drafted. The subsequent counsel while preparing the chief-affidavit gone through the records, noticed certain defects and advised the petitioner therein, that a separate suit is required to be filed as the plaint was not properly drafted and seeking amendment of the errors would be of substantial nature. Therefore, the petitioners therein were advised to withdraw the suit seeking liberty to file a fresh suit and the Court was pleased to allow such request and granted liberty to file a fresh suit.

7. Admittedly, the subject suit in O.S.No.1000 of 2014 is filed by the revision petitioner/plaintiff, seeking perpetual injunction against respondents/defendants. The material placed on record reveals that subsequent counsel for the revision petitioner/plaintiff before the Court

below, having examined the plaint pleadings noticed certain errors, omissions with regard to the possession over the suit schedule property and advised the revision petitioner to go for withdrawal of the suit seeking liberty to file a fresh one and also advised the revision petitioner that the amendment would substantially change the nature of the suit. Therefore, the revision petitioner filed the Subject Interlocutory Application.

8. In the given circumstances, the expression "sufficient grounds" is required to be considered liberally depending upon the facts and circumstances of each case. The reasons stated in the affidavit filed in support of the subject Interlocutory Application are change of counsel and the advise given by the subsequent counsel with regard to the defect in possession, certain omissions and commissions in filing the suit. It is also admitted that in the subject suit, trial is not yet commenced. Order XXIII Rule 1 of CPC contemplates that before commencement of trial, literally it can be construed that the amendment would not cure the defect and it substantially changes the nature of the suit. In the given circumstances, the Court below ought to have granted liberty to the revision petitioner/plaintiff to file a fresh suit instead of dismissing the subject interlocutory application. No prejudice would be caused to the respondents, if such a relief is granted to the revision petitioner. Generally, the Court has to take defective pleadings and defective reliefs as sufficient cause to allow an application under Order XXIII Rule 1 of CPC. Under these circumstances, the impugned order dated 01.04.2019 passed in

I.A.No.84 of 2019 in O.S.No.1000 of 2014 by the XX Junior Civil Judge, City Civil Court, Hyderabad, is liable to be set aside.

9. In the result, the Civil Revision Petition is allowed and the impugned order dated 01.04.2019 passed in I.A.No.84 of 2019 in O.S.No.1000 of 2014 by the XX Junior Civil Judge, City Civil Court, Hyderabad, is set aside. Consequently, I.A.No.84 of 2019 stands allowed granting liberty to file a fresh suit.

The Miscellaneous Petitions, if any, pending shall stand closed.

No costs.

//TRUE COPY//

SD/-V.SUDHA
ASSISTANT REGISTRAR


SECTION OFFICER

To,

- 1 The XX Junior Civil Judge, City Civil Court, Hyderabad,
- 2 One CC to Sri A Suryanarayana, Advocate [OPUC]
- 3 One CC to Sri K Sairam Murthy, Advocate [OPUC]
- 4 One CC to Sri P. Naveen Kumar, Advocate [OPUC]
- 5 Two CD Copies

JR
JM



HIGH COURT

DATED:27/02/2020



ORDER

CRP.No.1455 of 2019

ALLOWING THE CIVIL REVISION PETITION
WITHOUT COSTS

[Handwritten signature]
D-11/5/2020.