

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 2462 OF 2019

ORDER:

This Civil Revision Petition is filed questioning the order, dated 05.09.2019, passed by the learned Principal Junior Civil Judge, Husnabad, dismissing I.A.No.445 of 2019 in O.S.No.78 of 2014 filed by respondent No.1 herein under Order VII Rule 8 C.P.C. to receive the documents annexed to the Application.

In the facts of the present case, there is no necessity for this Court to issue notice to the respondents.

The defendant No.2 appeared to have filed the above said I.A. under Order VII Rule 8 C.P.C. seeking to receive eight documents. The prayer of which reads as under:

“For the reasons and grounds stated in the accompanying affidavit, the petitioner/Defendant, prove that the Hon'ble Court may be pleased to allow the petition and is receive the documents filed by the Petitioner/Defendant, Through list of Documents. And same may be received and make the said documents, as such exhibits, in the interest of Justice.”

It may be noted that the certified copy of the order in the I.A., Anthadpula Buchaiah @ Bhikshapathi is shown as petitioner-plaintiff, where as the first para of which reads as under:

“This petition is filed by the petitioner-defendant praying this Court to receive the documents.”

In view of the above, this Court has construed that the I.A. was, in fact, filed by the revision petitioner-defendant No.2. Being a defendant, proper provision which is to be invoked is Order 8 Rule 1A(3) C.P.C. Admittedly, the suit is of the year 2014 and the written statement was also filed on 04.05.2015 itself. The preconditions for receiving additional documents and marking the same are delineated in Order 8 Rule 1A(3) C.P.C., which mandates the petitioner to state why the documents could not be produced along with the written statement. Order 8 Rule 1A C.P.C., which is similar to Order 7 Rule 14 C.P.C., mandates that it is the duty of the defendant to mention the documents on which he relies on in support of his defence and file the same along with the written statement. In the event a particular document is not available, he is required to state where the same is and mention the same in the list of documents. Order 8 Rule 1A(3) C.P.C. is an exception to Order 8 Rule 1A(1) C.P.C., which gives an opportunity to a litigant to bring on record such of those documents, which, in spite of his best efforts, could not be produced along with the written statement.

In the present case on hand, the affidavit does not disclose any reason and the learned Judge was not even cautious of the provisions of law. The order under revision to the extent of not allowing the documents does not deal with any of the reasons, which ought to be considered by the Court below while allowing a petition. On the other hand, the learned Judge dealt with the relevancy of the documents, which is totally irregular and

impermissible. In those circumstances, the order under revision is in patent violation of the provision of law.

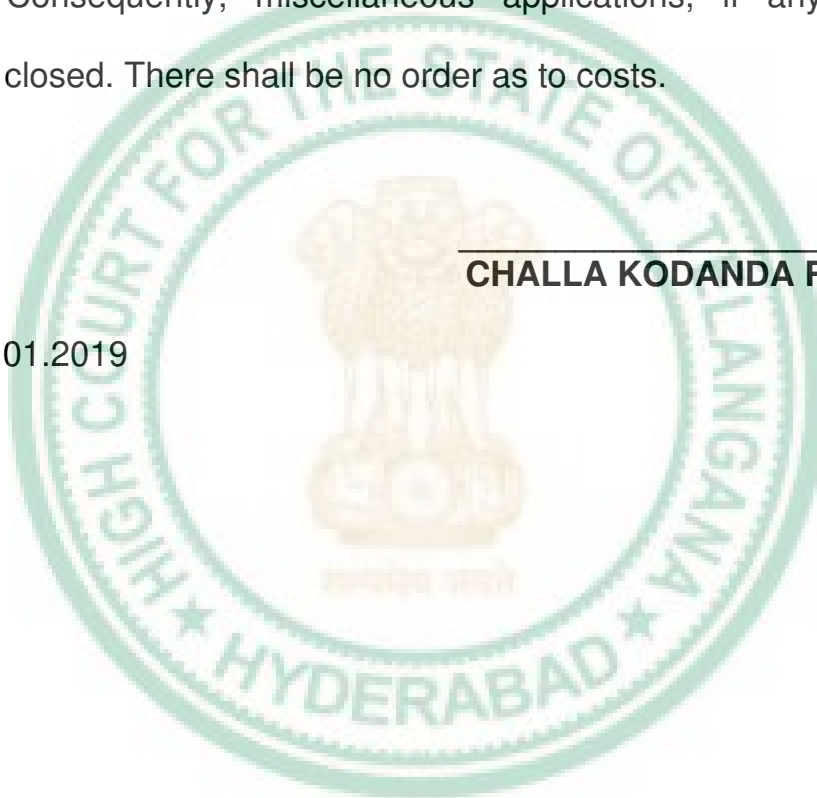
Hence, the civil revision petition is allowed and the order under revision is set aside. The matter is remanded to the Court below for fresh consideration of the I.A., strictly in accordance with law, taking into consideration various judgments rendered by this Court as well as the Apex Court.

Consequently, miscellaneous applications, if any shall stand closed. There shall be no order as to costs.

CHALLA KODANDA RAM, J

Dt:31.01.2019

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Rule 1 Order VIII of Code of Civil Procedure 1908
"Written statement"

(1) The defendant shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence.

(2) Save as otherwise provided in rule 8A, where the defendant relies on any document (whether or not in his possession or power) in support of his defence or claim for set-off or counter. claim, he shall enter such documents in a list, and shall,-

(a) If a written statement is presented, annex the list to the written statement :

Provided that where the defendant, in his written statement, claims a set-off or makes a counter-claim based on a document in his possession or power, he shall produce it in Court at the time of presentation of the written statement and shall at the same time deliver the document or copy thereof to be filed with the written statement; .

(b) if a written statement is not presented, present the list to the Court at the first hearing of the suit.

(3) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(4) If no such list is so annexed or presented, the defendant shall be allowed such further period for the purpose as the

Court may think fit.

(5) A document which ought to be entered in the list referred to in sub-rule (2), and which is not so entered, shall not, without the leave of the Court, be received in evidence on behalf of the defendant at the hearing of the suit.

