

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

FRIDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE A.VENKATESHWARA REDDY

CIVIL REVISION PETITION NO: 2338 OF 2022

Petition under Article 227 of the Constitution of India, aggrieved by the order dated 08-08-2022 in IA No. 306 of 2021 in OS No. 109 of 2008 on the file of the Court of the XXVI Additional Chief Judge, City Civil Court at Hyderabad

Between:

Smt. Seelam Laxmamma, W/o C.R. Govind Reddy, aged about 64 years, Occ. Retd. Govt. Service, R/o H.No.16-11-16-CA/2, Sripuram Colony, Hyderabad.

...PETITIONER/PLAINTIFF

AND

1. Smt. Chand Sultana, D/o Mir Abbas Hussaini, W/o Syed Mohd Ali Khan, aged about 65 years, Occ. Household, R/o H. No. 13-6-421/158, Satyanarayana Nagar Colony, Gudimalkapur, Mehdiapatnam, Hyderabad.
2. M/s Shell Leasing and Finance, Office at No. 1-8-306/7/A, Saleem Nagar Colony, Prakash Nagar, Begumpet, Hyderabad.
3. B. Lakshman Rao, S/o B. Rajalingam, aged about 58 years, R/o 1-8-306/7/A, Saleem Nagar Colony, Prakash Nagar, Begumpet, Hyderabad.
4. Smt. Razia Sultana, D/o S.A. Khan, aged about 49 years, Occ. Director of Shell Leasing and Finance, R/o H. No. 13-6-421/158, Satyanarayana Nagar Colony, Gudimalkapur, Mehdiapatnam, Hyderabad.
5. The State Bank of India, Rep. by its Manager, Industrial Branch, Sanath Nagar, Hyderabad.
6. G. Venkat Rao, S/o G. Rama Rao, aged about 65 years, Occ. Business, R/o H. No. 12-2-421/9, Alapati Nagar, Gudimalkapur, Hyderabad.
7. A.V. Prasanth Kumar Reddy, S/o A.V. Uma Shanker Reddy, aged about 33 years, Occ. Business, R/o Quarter No. 236, New MLA Quarters, Hill Fort, Hyderabad.
8. Khaleeq Imran, S/o Md. Habeen-ur-Rahman, aged about 43 years, Occ. Business, R/o H. No. 877-B (11-3-769), Malleshpally, Hyderabad.

...RESPONDENTS/DEFENDANTS

(Respondent Nos 2 to 7 Not Necessary parties)

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay of all further proceedings the operation of the common order dated 08-08-2022 in IA No. 306 of 2021 in OS No. 109 of 2008 on the file of XXVI Additional Chief Judge, City Civil Court at Hyderabad

Counsel for the Petitioner: SRI MAHMOOD ALI

Counsel for the Respondent No.8: M/s. SHARAD SANGHI

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

CRP No.2338 of 2022

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the common order dated 08.08.2022 in I.A.No.306 of 2021 in O.S.No.109 of 2008 on the file on the file of the XXVI Additional Chief Judge, Hyderabad.

2. This I.A. No.306 of 2021 was filed by the petitioner/plaintiff under Section 151 of the Civil Procedure Code, 1908 (for short 'CPC') for a direction to the respondents/defendant Nos.1 to 4 to be present in the Court in O.S.No.109 of 2008 and if necessary to direct the Police Tappachabutra and Langer House to ensure their presence and to pass such other orders as the Court deems fit. The learned judge of the trial Court has dismissed this I.A.No.306 of 2021 along with IA No.307 of 2021 filed by the petitioner/plaintiff to reopen the suit, which is coming up for arguments, through the common order dated 08.08.2022. The revision petitioner/plaintiff has challenged

the common order dated 08.08.2022 only to the extent in
LA No.306 of 2021.

3. Be it stated that on behalf of respondent No.8, Sri Sharad Sanghi, learned advocate has filed Vakalat. As per the cause title in the civil revision petition, respondent Nos.2 to 7 are not necessary parties. Whereas, according to the proceedings dated 30.11.2022, the revision petition was adjourned to 15.12.2022 with a condition that in default of filing of any proof of service or sending notice to respondent No.1, the civil revision petition stands dismissed against respondent No.1. Thereafter, as per the memo dated 19.12.2022, no such report is filed, but in the written submissions, it is mentioned that the respondent/defendant No.1 was set *ex parte* before the trial Court in the original suit in OS No.109 of 2008 and that the only issue is the defendant No.8 does not have any title. As such, the civil revision petition stands dismissed against respondent No.1 pursuant to the proceedings dated 30.11.2022.

4. Heard the learned counsel for the revision petitioner/plaintiff and the respondent No.8/defendant No.8. The submissions made on either side have received due consideration of this Court.

5. Undisputedly, the original suit in OS No.109 of 2008 was filed by the plaintiff for declaration of title and recovery of possession in respect of the suit schedule property. In the original suit, defendants 1 to 4 remained absent and they were set *ex parte*. Evidence on both sides concluded and when the suit was adjourned for arguments, the present application in IA No.306 of 2021 was filed by the petitioner/plaintiff with a prayer to direct the defendant Nos.1 to 4 to be present in the Court. Along with this I.A., another I.A.No.307 of 2021 is also filed with a prayer to reopen the suit, which is coming up for arguments.

6. As per the orders impugned, defendant Nos.1 and 4 were set *ex parte* on 09.06.2008, whereas defendant Nos.2 and 4 were set *ex parte* on 15.10.2008. The suit summons were taken against them by way of substituted

service by publishing in a news paper and they remained absent and set ex parte. The only defendant contested the suit is defendant No.8, who filed the written statement, issues settled, trial concluded, written arguments were also filed on both sides. At this stage, the present application in I.A.No.306 of 2021 along with I.A.No.307 of 2021 are filed for direction against the defendant Nos.1 to 4 for their appearance, if necessary directing the concerned police to produce them before the trial Court and to reopen the suit respectively.

7. Whereas, the specific case of the contesting defendant No.8 is that the prayer in the petition is misconceived, no such direction could be issued either to the defendant Nos.1 to 4 or to the police concerned to secure their presence before the trial Court and such application is only filed to delay the proceedings before the trial Court.

8. The learned counsel for the revision petitioner/ plaintiff would submit that the present civil revision petition may be disposed of by giving an opportunity to the

parties to file the documents in their possession. *Per contra*, the learned counsel for the respondent/defendant No.8 would submit that the original suit is filed in the year 2008, defendant Nos.1 to 4 were set *ex parte* way back in the year 2008 itself and at this belated stage, after conclusion of the trial, when the suit was posted for arguments, this application in IA No.306 of 2021 along with IA No.307 of 2021 is filed and without assailing the orders in IA No.307 of 2021, as such the present civil revision petition questioning the validity of the orders in IA No.306 of 2021 only is misconceived and at this belated stage, no such direction be issued either to the defendant Nos.1 to 4 or to the police concerned for causing their presence in the original suit before the trial Court.

9. As per the prayer in IA No.306 of 2021, the petitioner/plaintiff has requested the trial Court to direct the respondents/defendant Nos.1 to 4 to be present in the Court and if necessary to direct the police concerned to ensure their presence before the trial Court. Whereas, as per the cause title in the present civil revision petition, the

respondent Nos.2 to 7 who are defendant Nos.2 to 7 are not necessary parties and the notice of respondent /defendant No.1 is not served in spite of conditional order dated 30.11.2022. Undisputedly, the respondent/defendant Nos.1 and 4 were set *ex parte* on 09.06.2008 and respondent/defendant Nos.2 and 3 were set *ex parte* on 15.10.2008 in the original suit. The defendant No.8 is only contesting the original suit, trial concluded, written arguments were also filed. At this belated stage, the application in IA No.306 of 2021 is filed under Section 115 of CPC making certain allegations against the Process Server as mentioned in para-4 of the supporting affidavit. As per the order impugned in para-9, it is categorically mentioned by the learned judge of the trial Court that the summons were issued to these defendant Nos.1 to 4 by way of substituted service, as such I find no force in the averments made in the supporting affidavit making certain allegations against the Process Server concerned in the year 2008.

10. That apart, though the present civil revision petition is filed to set aside the impugned order, as stated above, the defendant Nos.2 to 7 (including the defendant Nos.2 to 4) are not necessary parties as mentioned in the cause title and that notice was not served in spite of granting ample opportunity to the defendant No.1 and failed to comply with the conditional order dated 30.11.2022, as such the petitioner/plaintiff is not entitled for any such relief against the defendant Nos.1 to 7.

11. The learned counsel for the revision petitioner would submit that without looking into the merits or otherwise of the claim made by the revision petitioner/plaintiff, the present civil revision petition may be disposed of by giving an opportunity to the parties to file documents in their possession in support of their respective claims.

12. In this context, I may refer to the principles laid by the Hon'ble Supreme Court of India in ***M/s. Bagai Construction, through its Proprietor Lalit Bagai v. M/s.***

***Gupta Building Material Store*¹ and in *N.C. Bansal v. Uttar Pradesh Financial Corporation and another*² .**

13. In the above decisions, the Hon'ble Supreme Court while dealing with similar facts for production of additional documents and recall of witnesses held that recording of evidence is to be a continuous process followed by arguments and decision of the Court. Adjournments, reopening and recalling of witnesses are to be allowed only in compelling circumstances. Further held that such applications for reopening the case and production of documents can only be considered when the trial is yet to begin or when it is at the initial stage.

14. In the case on hand, undisputedly, defendant Nos.1 to 4 were set *ex parte* way back in the year 2008 itself. Thereafter, the contesting defendant No.8 has filed the written statement, issues settled, trial concluded and written arguments were also filed. At this belated stage in a suit relating to the year 2008, the applications in IA

¹ AIR 2013 SC 1849

² [2018] 2 SCC 347

Nos.306 and 307 of 2021 were filed to direct the defendants 1 to 4 to be present in the court or to cause their presence with the help of police concerned and to reopen the suit.

15. It is pertinent to note that the common order impugned in IA No.307 of 2021 for reopening the original suit is not assailed and the only order challenged through this revision petition is the order in IA No.306 of 2021 seeking a direction to the defendant Nos.1 to 4 to appear before the Court or direction to the concerned police to cause their appearance. But, the learned counsel for the revision petitioner has requested to dispose of the present revision petition directing the trial Court to receive the documents filed by the parties to the suit.

16. In the above factual matrix, considering the settled legal principles, the prayer in IA No.306 of 2021 to direct the defendant Nos.1 to 4 to be present in the court or to cause their presence with the help of the concerned police or the request made by the learned counsel for revision petitioner to permit the petitioner to file the

documents is wholly untenable, misconceived and cannot be granted. Therefore, I do not find any jurisdictional error or infirmity in the common order impugned, the trial Court has rightly dismissed the application and it does not warrant any interference by this Court.

17. Therefore, in that view of the matter, since the original suit is pending since 2008 onwards, arguments also appears to have been concluded, the learned judge of the trial Court shall make every endeavour to dispose of the original suit within two months from the date of receipt of copy of this order.

18. With the above observations and findings, the Civil Revision Petition is dismissed without costs.

As a sequel, miscellaneous applications, if any pending in this revision petition, shall stand closed.

//TRUE COPY//

Sd/-K.AMMAJI
ASSISTANT REGISTRAR


SECTION OFFICER

To,

1. The XXVI Additional Chief Judge, City Civil Court at Hyderabad
2. One CC to Sri Mahmood Ali, Advocate [OPUC]
3. One CC to M/s, Sharad Sanghi, Advocate [OPUC]
4. Two CD Copies

plp

HIGH COURT

DATED:30/12/2022

ORDER

CRP.No.2338 of 2022



DISPOSING OF THE CRP

⑥
PM
20/1/23