

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

**FRIDAY, THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE SRI JUSTICE T.VINOD KUMAR

CIVIL REVISION PETITION NO: 2198 OF 2023

Petition under Article 227 of the Constitution of India, against the Order dated 06-07-2023 passed in IA.No.449 of 2022 in OS.No.453/2022 on the II Additional Senior Civil Judge, Medchal, Malkajgiri district at Malkajgiri.

Between:

Gousia Begum, W/o. Fazal Shariff, Indian Female, Aged about 70 years,
Retired Employee, R/o. 1-9-297/3 Vidyanagar Hyderabad.

...Petitioner/Respondent/Plaintiff

AND

Nalla Malla Reddy, S/o. Sai Reddy, Indian, Male Aged about 75 years, Occ.
Business, R/o.4- 52, Vidyanagar, Kashwanisingaram Village, Ghatkesar
Mandal, RR District.

...Respondent/Petitioner/Defendant

Counsel for the Petitioner: Sri. VINJAMURI RANGA BABU

Counsel for the Respondent: Sri. G. NARENDER REDDY

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

CIVIL REVISION PETITION No. 2198 of 2023

ORDER:

1. This Civil Revision Petition is filed aggrieved by the order dated 06.07.2023 in I.A. No. 449 of 2023 in O.S. No.453 of 2022 (Old. O.S.No. 538 of 2010) by the II Additional Senior Civil Judge, at Malkajgiri, Medchal Malkajgiri District, as being illegal and contrary to settled principles of law.
2. Heard Sri. V. V. Raghavan, learned counsel appearing for Sri. V. Ranga Babu, the learned counsel for the petitioner, Sri. G. Narender Reddy learned counsel for the respondent and perused the record.
3. The petitioner herein is the plaintiff in the suit filed for declaration and consequential injunction. The respondent herein is the defendant in the suit.
4. The suit was originally instituted in the year 2010. The respondent herein had filed his written statement before the Trial Court. At the stage of further evidence of the defendant, the Respondent herein filed an application under Order VIII Rule 1A

of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') with the following prayer:

"For all the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to grant leave to the petitioner/defendant herein to file the Certified Copies of the 1) CC of Sale Deed bearing No. 4389 of 1992, dt: 11.06.1992, 2). Original Sale Deed bearing document No. 8125 of 2005, dt: 10.11.2005, as per list, for the purpose of marking the same on behalf of the petitioner/defendant herein and be pleased to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and in the interest of justice."

The petitioner herein filed her counter opposing the same.

5. The Court below after hearing both sides, allowed the application observing that the documents sought to be brought on record are the title documents of the respondent. Aggrieved by the same the present revision is preferred.

6. Learned counsel for the petitioner contends that, the court below erroneously allowed the application despite noticing that the instant application was filed at the fag-end of the trial; that sufficient cause was not shown by the respondent for not filing the documents along with the written statement; and thus granting leave to the petitioner to produce such documents is contrary to the

decision of this Court in *Pallepati Narsaiah and Ors. Vs. P. Satyanarayana and Ors*¹.

7. *Per contra*, learned counsel for the respondent herein contends that the respondent was unable to produce the documents in question as they were not traceable; and that if the respondent is not permitted to produce the same, he shall be put to grave prejudice.

8. I have taken note of their respective contentions.

9. It is pertinent to note that sub rule (1) of Rule 1A of Order VIII casts a duty on the defendant to produce the documents on the basis of which he places reliance at the time of filing the written statement. Sub-rule (2) thereof states that in case any document on which reliance is placed is not in the possession or power of the defendant, he *shall* specify where such document lies. Sub-rule (3) provides that in a situation where the defendant seeks to produce a document which ought to have been filed at the time of filing

¹ 2019 (5) ALD 411

written statement, the same shall not be allowed to be received in evidence without the leave of the Court.

10. This Court in *Pallepati Narsaiah's* case (supra) dealing with an application filed to receive documents at a later stage, held that the leave to file documents under Order VII Rule 1A(3) of the Code, 1908 can only be granted on furnishing sufficient cause justifying the failure of the defendant to file the said documents along with the written statement. The relevant observations are as under:

12. In *Ravi Satish v. Edala Durga Prasad*, MANU/AP/0736/2009 : 2009 (3) ALT 236, this Court held as under:

"Sub-rule (3) of Rule 1-A of Order VIII permits the documents to be received only on leave being granted by the Court. **Grant of leave is not for the mere asking, nor is the Court a mere post-office to receive documents even in the absence of any reasons being furnished for failure to file the said documents along with the written statement.** Admittedly, in the case on hand, no reasons whatsoever have been furnished by the petitioner, let alone adequate cause been shown as to why the documents, which could not be filed earlier along with the written statement. Having chosen not to give any reasons, it is not open to the petitioner to contend that the Court below should have received the documents, since the petitioner's right could be adversely affected for failure on its part to receive the documents. While it is no doubt true that admissibility and proof of documents are matters which ought not to be gone into at the time of receipt of documents, **the fact, however, remains that the leave sought for can only be granted on adequate reasons being furnished justifying failure on the part of the applicant in not filing the documents along with the written statement earlier.**"

13. Counsel for the respondents also relied on *Voruganti Narayana Rao v. Bodla Rammurthy*, MANU/AP/0468/2011 : 2011 (6) ALD 142 : 2011 (6) ALT 299. In that case also, this Court has taken the view that grant of leave under Order VIII Rule 1-A(3) CPC for filing documents belatedly cannot be granted for mere asking and the Court is not a mere post-office to receive documents even in the

absence of any reasons furnished for failure to file the said documents along with the written statement. It observed that only if party is prevented by circumstances beyond his control to file the documents along with the written statement, the Court may consider allowing the defendant to file documents subsequently."

(emphasis supplied)

11. The aforesaid principle was reiterated by this Court in *Choudari Rajesham Vs. Choudari Lingalaiah and Ors*²,

12. The facts in the present case shall be examined in the light of the above stated position of law. It is pertinent to note that though the main suit was instituted in the year 2010, the instant application was only filed at the stage of cross examination of the respondent. Moreover, as rightly contended by the petitioner herein there is absolutely no whisper of the existence of these documents in the written statement filed by the respondent.

13. Further, a perusal of the impugned order reveals that the respondent herein had on an earlier occasion filed a similar application numbered as I.A.No. 150 of 2023 under Order VIII Rule 1A of the Code, 1908, seeking to produce several documents. The documents now sought to be produced by the respondent formed a part of the earlier application. The Court below *vide* order

² 2019 (6) ALD 583

dated 21.04.2023 while partly allowing the said application rejected the request of the respondent to produce the documents which are sought to be produced under the present application. The impugned order categorically records that leave for these documents was rejected as the respondent failed to show sufficient cause for delay.

14. After the Court below had rejected to grant leave in respect of the documents sought under the present application, the respondent herein had preferred the underlying application on 16.06.2023 on the ground that the said documents were now located. The reasons asserted by the petitioner for his inability to file the documents along with the written statement are that, (i) Sale Deed bearing document No. 8125 of 2005 dated 10.11.2005 was traced out very recently and now the same was available with the respondent. (ii), Only a certified copy of the Sale Deed bearing document No. 4389 of 1992 dated 11.06.1992 was available with the respondent, as the original sale deed was handed over to the third-party purchaser.

15. So far as the first explanation is concerned this Court is of the view that the same is extremely vague without elaborating as to how the respondent could manage to locate the original of a document claimed to have been missing for over a decade, immediately within two months from the dismissal of the earlier application. Further, it is to be seen that as per the explanation offered the original of the second document was with a third-party purchaser. The said explanation falls short of constituting sufficient cause as it contradicts the respondent's version in I.A.No. 150 of 2023 that the said document was misplaced. A person having handed over a document to subsequent purchasers cannot also be allowed to claim that the very same document was misplaced. Thus, this Court is of the view that the underlying application was filed with an intention compensate the failures in the respondent's case.

16. In the light of the aforesaid, this Court is of the view that the impugned order is contrary to settled principles of law, and is thus liable to be set-aside.

17. Accordingly, the Civil Revision Petition is allowed. The order dated 06.07.2023 in I.A. No. 449 of 2023 in O.S. No.453 of 2022 (Old. O.S.No. 538 of 2010) by the II Additional Senior Civil Judge, at Malkajgiri, Medchal Malkajgiri District is set-aside.

18. Consequently, miscellaneous petitions pending if any shall stand closed. No orders as to cost.

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SD/- MOHD. ISMAIL
ASSISTANT REGISTRAR



SECTION OFFICER

To,

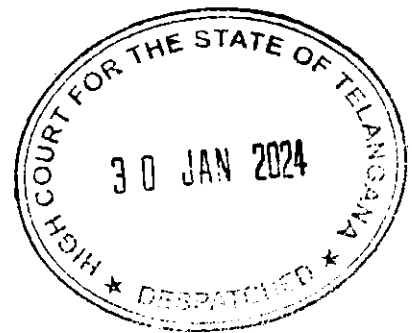
1. The II Additional Senior Civil Judge, Medchal, Malkajgiri district at Malkajgiri
2. One CC to Sri. VINJAMURI RANGA BABU, Advocate [OPUC]
3. One CC to Sri. G NARENDER REDDY, Advocate [OPUC]
4. Two CD Copies

PSR/JAK



HIGH COURT

DATED:29/12/2023



ORDER

CRP.No.2198 of 2023

**ALLOWING OF THE CIVIL REVISION PETITION
WITHOUT COSTS.**

⑥ VLV
30/1/24