

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

CRP No.2935 of 2022

ORDER:

1. This Civil Revision Petition is filed aggrieved by the order dated 30.11.2022 in I.A.No.412 of 2022 and I.A.No.413 of 2022 in O.S.No.348 of 2010 passed by the II Additional District Judge, at Medchal District, on the ground that the Trial Court erred in allowing the interlocutory applications filed summoning the Sub-Registrar, Medchal-Malkajgiri, at a belated stage in the suit.
2. Heard Sri. D. Prakash Reddy, learned senior counsel appearing on behalf of Sri. D. Aniketh Reddy, learned counsel for the Petitioners and Sri. Raja Sripathi Rao, learned senior counsel appearing on behalf of Sri. Satish Kumar Dornala learned counsel for the Respondent No.1 and perused the record.
3. Petitioners herein are the Defendants No.1 & 2 in the suit. The Respondent No.1 is the Plaintiff in the suit. The suit is filed for declaration, recovery of possession of the suit scheduled properties and cancellation of sale deed Doc. Nos. 244 of 1982 dated 20.01.1982, 9600 of 2004 and 9601 of 2004 both dated 17.11.2004 and 9820 of 2007 dated 07.08.2007.

4. In the suit before the Trial Court, issues were settled in 2018. The Respondent No.1 had examined himself as PW-1 but no further witnesses were examined on his behalf. At that stage, the suit was transferred from one court to another on two occasions on the ground of jurisdiction, before it was finally transferred to the court of the II Additional District Judge, Medchal. Thereafter, as the Petitioners herein were not coming forward to adduce their evidence, the Trial Court closed their evidence on 26.09.2022 and posted the matter for arguments. No application was preferred by the Petitioners herein to reopen their evidence.

5. The Respondent No.1 herein at that stage, had filed an application under Order 16 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'), seeking to reopen his evidence and summon the Sub-Registrar, Medchal-Malkjagiri, along with records pertaining to Doc. No. 244 of 1982 dated 12.01.1982, Book I more particularly Volume-347, pages 43 to 47, thumb impression register for examination.

6. The Trial Court on hearing both parties, though observing that the Respondent No.1 herein had neither filed any list of witnesses as contemplated under Order 16 Rule 1 of CPC nor

showed sufficient cause for such omission under Order 16 Rule 1(3) of CPC, had however noted that summoning the proposed witness along with the requested documents was necessary to decide the dispute between the parties. Observing as above, the Trial Court had allowed the application without costs. Aggrieved by the said order, the Petitioners herein preferred the present revision.

7. The learned senior counsel appearing for the Petitioners contends that, the Respondent No. 1 along with few others had filed a subsequent suit in O.S. No. 125 of 2019 before the Junior Civil Judge, Ranga Reddy District, at L.B. Nagar in respect of the same suit scheduled property seeking identical relief. He submits that although no temporary injunction was granted by the court in O.S.No. 125 of 2019, the conduct of the Respondent No.1 in altering the cause of action in the said suit, shows the Respondent No.1's falsehood and portrays his intention to grab the Petitioners' property. It is thus contended that, on this ground alone the trial court ought to have dismissed the application filed by Respondent No.1 as being frivolous and vexatious. In support of his contention, he placed reliance on the decision of the erstwhile High Court of

Andhra Pradesh in *A. Shankar Lingam Vs. Meharunnisa Begum & Ors*¹, wherein this Court had held that an application under Order 16 Rule 1 of CPC, filed at a belated stage and lacking bonafides should be dismissed.

8. Learned senior counsel arguing on the merits of this revision would contend that, Order 16 Rule 1(3) of CPC mandates a party seeking to summon a witness other than from the list of witnesses, to show sufficient cause for omission of such witness from the list and the cause for delay in summoning such witness. It is contended that, showing reasons for omission is a pre-requisite to summon such a witness.

9. Learned senior counsel further contends that, the Respondent No.1 in the instant interlocutory applications seeks to summon a witness intending to prove a document executed 40 years ago. It is then contended that, as the trial court had settled issues in 2018, the Respondent No.1 under the scheme of Order 16 Rule 1 of CPC was required to file his list of witnesses 15 days thereafter. He thus contends that the Trial Court ought not to have allowed the

¹ 2007 SCC OnLine AP 7

application after categorically finding that no cogent reason was given for making the application after the lapse of 4 years, at the fag end of litigation. Placing reliance on the decision of the Supreme Court in ***Union of India Vs. M/s. Orient Engg. & Commercial Co. Ltd & anr***², it was contended that, the Court ought not to summon every witness proposed by a party, more so when such an application is made frivolously.

10. Per contra, learned senior counsel appearing for the Respondent No.1 contends that, the court under Order 16 Rule 14 of CPC has the power to summon any witness on its own accord if it deems necessary to adjudicate the disputes between the parties. He thus, contends that impugned order has to be considered as one passed in exercise of *suo moto* powers under Order 16 Rule 14 of CPC. It is further contended that as the Petitioners did not enter the witness box to adduce their evidence, the Respondent No.1 is divested of his opportunity to cross-examine him. He thus contends that, summoning the Sub-Registrar, Medchal-Malkajgiri along with the required documents, is vital to prove his case.

² (1978) 1 SCC 10

11. Learned senior counsel appearing for the Petitioners in reply contends that the *suo moto* power conferred under Order 16 Rule 14 of CPC, cannot be exercised by the court in an application made under Order 16 Rule 1 of CPC.

Considerations by the Court:

12. Usually, a party to the suit produces witnesses in support of his case. In some cases, a party is not in a position to summon witnesses on whose evidence he seeks to place reliance. In such cases he may have to be summoned by the Court. Order 16 of CPC provides the procedure for a party seeking to summon such witnesses who are beyond his control (see ***Smt. Rita Pandit Vs Atul Pandit***³).

13. As the dispute in the present revision revolves around summoning a witness by the court, it is appropriate to discuss Order 16 of CPC. Under Order 16 of CPC the court can summon a witness in exercise of powers under Rule 1 as well as under Rule 14. It is ordinarily understood that a witness under the former is summoned at the behest of a party to the suit, while under the latter

³ 2005 SCC OnLine AP 43 : AIR 2005 AP 253

he is summoned in exercise of the court's *suo moto* power, as a court witness.

14. In order to summons a witness under Order 16 Rule 1 of CPC, ordinarily a party to the suit is required to give a list of witnesses he intends to examine, within 15 days from the date of framing the issues. However, on showing sufficient cause, the Court under Sub-Rule (3) can permit a party to examine a witness whose name was not mentioned in the list of witnesses, by summoning him. Therefore, in order to summon the proposed witness(s) under Order 16 Rule 1(3) of CPC, sufficient cause for omission from the list of witnesses has to be shown by a party making an application.

15. The Rajasthan High Court in ***Satnam Transport Company and Ors. Vs. Prakash Mal Surana***⁴, held that on showing sufficient cause even when a list of witnesses is not filed, the court can allow an application filed to examine a witness. The relevant extract reads:

⁴ AIR 1981 Raj 75

25. In the light of the guiding principles for construction of procedural provisions and in the light of the ratio of the cases decided after Tulsi Bai's case (MANU/RH/0064/1964 : AIR 1964 Raj 243) (supra), **I am inclined to [construe Order 16, Rule 1 (3) and Rule 1A, C. P. C., in the manner that even where no list of witnesses is filed, still the court has power to permit a party to examine any witness produced by it after recording reasons, if sufficient cause is shown for not filing the list.** It is true that Order 16, Rule 1, C. P. C., does not conceive and contemplate a situation of non-filing of the list, but from that, it cannot be said that the legislature intended to deprive the Court of such an important power of examining evidence at the instance of a party without which no justice can be administered. The matter can further be viewed in the light of the decision in the case of Bhonreylal v. Kunj Beharilal "AIR 1969 Raj 299) (supra). **According to that derision, court is possessed of the power of condonation of delay in the presentation of the list by showing sufficient cause. After condonation of delay in the presentation of the list, witnesses can be examined.** The object of the rules seems to be speedy trial and prevention of cooking up of witnesses by giving their names in the list, **but the emphasis seems to be on allowing evidence by showing sufficient cause for not filing the list or for omission of the names of witnesses in the list and not on depriving the court of its power to permit the party to examine witnesses when list is not filed.**

16. In the case at hand, the Respondent No.1 had preferred the interlocutory application after closure of evidence at the time of final arguments. The impugned order also records that no list of witnesses was filed before the Trial Court. Having pleaded that sale deed Doc. No. 244 of 1982 dated 12.01.1982 was forged, the

Respondent No.1 is expected to diligently prosecute his case and call every witness he deems necessary to prove the execution of the document in question. The court in light on ***Satnam Transport Company's*** case (supra) can summon a witness even in the absence of a list of witnesses, provided sufficient cause is shown. However, in the present case, the application filed by the Respondent No.1 is bereft of reasons for delay in filing the application to summon the proposed witness. Moreover, the only explanation the Respondent No.1 now offered while seeking permission of the Court to summon the Sub-Registrar, is that it would be just and necessary to ascertain the real facts while adjudicating the case. The conduct of the Respondent No.1 is indeed negligent and the trial court was erroneous in holding that a mere delay in proceeding with the case cannot be a ground for rejection, as the Respondent No.1 had also not shown sufficient cause as required under Order 16 Rule 1(3) of CPC.

17. On examining the question whether the court can summon a witness, even when the applicant fails to show sufficient cause for omission, the erstwhile High Court of Andhra Pradesh in the case

of *M. Dhananjaiah Goud v. Mogudampally Chandraiah*⁵, has held that the court had discretionary power under Order 16 Rule 1 of CPC to summon a witness to do complete justice. The relevant extract reads:

“6. From a reading of the above provision it could be seen that under Order 16, Sub-rule (1) of Rule 1 contemplates that the parties shall present in court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summons to such persons for their attendance in court, not later than fifteen days after the settlement of issues. As per Sub-rules (2) and (3) of Order 16 Rule 1, if a party desirous of obtaining any summons for the attendance of any person, whom he omitted to show in the list as contemplated under Sub-rule (1), shall file an application for the said purpose by showing sufficient cause and the court may by recording reasons, permit a party to call such witness. Therefore, it could be seen that discretion is granted (sic. given) under Sub-rule (3) of Rule 1 to the court, for the reasons to be recorded, to summon the witnesses whose names are omitted in the earlier list for the sufficient cause shown by the party. In the present case, the 1st respondent has produced certain documents and further during enquiry, he produced some more documents and they were all marked and his case is that those documents have to be proved by examining the authorities who issued them and it is necessary to prove his case in the election petition. The Apex Court in the decision reported in *Mange Ram v. Brij Mohan* [1983] 3 SCR 525, in an election petition, though in a different situation while considering the alleged contradiction between Sub-rule (1) of Rule 1 and Rule 1-A of Order 16 held that Order 16 Rule

⁵ 2008 SCC OnLine 218

1(3) confers wider jurisdiction on the court to cater to different situations.

In the present case, though the 'sufficient cause' for omission of the names of the witnesses in the list contemplated under Sub-rule (1) of Rule 1 of Order 16 is obscure, since the discretion is granted to the court, in the light of the above facts and circumstances and considering the main relief sought for by the 1st respondent and to have a comprehensive adjudication and to do complete justice, I am of the view, the court below has rightly exercised its discretionary jurisdiction."

18. By the above decision, in an application filed under Order 16 Rule 1 of CPC, the court can exercise its discretionary power to summon a witness for a comprehensive adjudication, despite the applicant not offering sufficient cause for failure to submit a list of witnesses. Similar view was taken by the Rajasthan High Court in *Satnam Transport Company's* case (supra) as under

15...When the courts have been conferred with powers to examine any witness present in court under Rule 7 or to examine or summon any witness under Rule 14, **then in the light of the powers under Rules 7 and 14, Rule 1 is required to be interpreted.** Rule 7 and Rule 14 clearly indicate that the courts primarily exist for dispensing real and substantial justice and if they are to impart only technical justice, the court will never require to examine any witness of their own accord. **Powers under Rules 7 and 14 have only been conferred with a view to impart justice to the parties.**

19. The above decisions indicate that powers under Order 16 Rule 14 of CPC, can be exercised by the Court even while dealing

with an application under Order 16 Rule 1 of CPC. To examine this proposition, it is necessary to analyze the relevant provision:

Rule 14. Court may of its own accord summon as witnesses strangers to suit:

Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court ***at any time thinks it necessary*** to examine any person, including a party to the suit and not called as a witness by a party to the suit, ***the Court may, of its own motion***, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

(emphasis supplied)

From the language used in Order 16 Rule 14 of CPC, it is clear that this power can only be invoked by the Court on its own motion. However, the Court can always exercise its discretion on information of a crucial witness being brought to the notice of the court.

20. The erstwhile High Court of Andhra Pradesh in the case ***Shaik Abdul Rasool Vs. G. Lakshmi Reddy and Ors***⁶, has held as under:

“17. Having said this, the High Court proceeded to observe that the Court is not obliged to invoke the power under that provision at the instance of the parties.

⁶ 2010 SCC OnLine AP 802 : (2011) 3 ALD 138

However, a rider was added to the effect that an application filed by the parties invoking such a provision can be treated as a device of passing on the information, which may help the Court in forming an opinion, whether or not to exercise its power under Rule 14 of Order 16 Code of Civil Procedure. The relevant portion reads:

It is true that the court is not obligated to invoke the power at the instance of the parties and the parties have no right to move an application under this rule. **But however either of the parties can bring to the notice of the court the necessity for examining any person as court witness. On such application the court may scan the totality of facts and circumstances apart from the situations projected by the parties and arrive at an independent conclusion as to the necessity of a court witness.** The parties are not totally barred from bringing to the notice of the court by application or otherwise and the court is not bound to take action on the averments or allegations contained in the application and it is the sole discretion of the court. The application by the parties may be considered as passing on the information so that the court may examine the issue in depth on the facts and circumstances set out in the application and other aspects.

23. From the above discussion, what emerges is that, the power under Rule 14 of Order 16 Code of Civil Procedure, is to be exercised by a Court, on its own accord, and not on the insistence by a party to the suit. **Though a party to the suit can place any information, which may impress upon or convince the Court to exercise its powers under that provision, an independent application for that very purpose does not lie.** If parties are permitted to make independent application for summoning of an individual as a Court witness and are conferred with the right to insist the Court to accede their request, it may lead to several complications. It can be used as a device to overcome their inability or failure to summon a witness, and in certain cases, to fill up the lacuna in the evidence, which is already on record. That was never the intention of the Parliament. If a party wants a particular individual be summoned or examined as witness, it must have recourse to Rules 1 and 1-A of Order 16 Code of Civil Procedure.”

By the above decision, no application can be made by a party to invoke the Court’s power under Order 16 Rule 14 of CPC.

21. Therefore, a party intending to summon an omitted witness under Order 16 Rule 1(1) of CPC, can make an application to the

court under Order 16 Rule 1(3) of CPC, to condone such a lapse by showing sufficient reason. The court on consideration of the application has a discretion to either allow or disallow the same. However, if the court for any other reason comes to a conclusion that the proposed witness is crucial, it can consider the application filed under Order 16 Rule 1 of CPC as information, and issue summons to the witness by invoking *suo moto* powers under Order 16 Rule 14 of CPC. Summoning of such witness would not defeat the right of the opposite party, as they can exercise their right to cross-examine.

22. Further, the words “*at any time thinks it **necessary***” in Order 16 Rule 14 of CPC are not fettered or curtailed to any particular stage of suit. Therefore, it is understood that wide discretion is vested in the court, to summon a witness in exercise of powers under Rule 14, once it concludes that it is necessary for proper adjudication. The contention of the petitioners that, powers of a court under Order 16 Rule 14 of CPC cannot be exercised in an application filed under Order 16 Rule 1 of CPC, cannot be accepted as the provision does not confine exercise of such powers only to

specific circumstances. It would be for the court to decide if a situation warrants intervention under Order 16 Rule 14 of CPC.

23. In the facts at hand, the Trial Court had made a specific recording that the document proposed to be produced by summoning the sub registrar, Medchal-Malkajgiri was important and was needed to decide the dispute on merits. Therefore, in the view of this Court the order passed by the trial court would have to be construed as one passed in exercise of its *suo moto* power under Order 16 Rule 14 of CPC.

24. The Supreme Court in ***Orient Engg's*** case (supra), had held that an application for summoning a witness shall become vexatious if no ground is made out. In the present case, as the trial court had found merit in calling the proposed witness, the application made by the Respondent No.1 cannot be called vexatious. Therefore, the reliance placed by the learned senior counsel for the petitioners on ***Orient Engg's*** case (supra), though applies, does not advance the case of the Petitioner. Also, the reliance placed on ***A. Shankar Lingam's*** case (supra) does not apply to the present case, as the Court in that case had observed that the Petitioner therein had

examined four witnesses and had also recalled DW-1 therein on a separate occasion and had resultantly agreed with the conclusion of the trial court, that the application made under Order 16 Rule 1 of CPC was not *bona fide*.

25. Moreover, the general rule of procedural law permitting all admissible evidence to be recorded, to further the cause of substantial justice has to be borne in mind. The erstwhile High Court of Andhra Pradesh, in ***Addagatla Narendar Vs. Some Vijayalakshmi***⁷, while dealing with Order 16 Rule 1 of CPC held as under:

"9. Unless statutory infraction is imperative, procedural technicalities not to defeat the substantial justice. Permitting let in of all admissible evidence is the general rule, rejecting thereof under specified circumstances to be an exception always. Liberal approach to lean in favour of doing substantial justice despite the procedural technicalities, may be highly essential in several of the cases lest the very justice delivery system will suffer in its working to the detriment of the litigant public."

⁷ 2006 SCC OnLine AP 75

The Madras High Court in the case of *Sethurajan Vs. Rajalakshmi*⁸, held as under

“13. As far as the present case is concerned, the Petitioner/Defendant has assigned a reason that he is indisposed and therefore, he has not been in a position to file a list of witnesses (as seen from the averment made in I.A. No. 436 of 2009 in para 2 of the affidavit filed by the Petitioner/Defendant). **When a party makes an endeavor to substantiate his case by summoning a public witness like SRO of Sub Registrar Office and also prays permission of the Court to examine him as witness and to produce a particular document like Will etc., than without harping and technicalities its a duty of Court of Law to pass an order lenient in favour of a party to provide an adequate opportunity for him to prove his case in one manner or other.**

14. At the time of granting permission, it is not for the Court of Law to go into the technicalities or niceties of the merits and demerits of the issues involved in the case...”

26. This court also finds force in the submission of the Respondent No.1 that the proposed witness is necessary to decide the matter, since the Petitioners have neither adduced their evidence nor sought for reopening the same. Rejecting the Respondent No.1’s plea to examine a witness solely on procedural failures, in the view of this court would lead to miscarriage of justice. The

⁸ 2012 SCC OnLine Mad 3662 : (2012) 5 LW 167

Rajasthan High Court in *Satnam Transport Company's* case (Supra), referred to the Supreme Court's decision on interpretation of procedural laws as under:

"10. In Sangram Singh v. Election Tribunal, Kotah, (MANU/SC/0044/1955 : AIR 1955 SC 425), their Lordships of the Supreme Court observed as under:--

"Now a code of procedure must be regarded as such. **It is procedure, something designed to facilitate justice and farther its ends, not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable, elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) less the very means designed for the furtherance of justice be used to frustrate it.**"

27. In conclusion, this Court is of the view that, the trial court on coming to an independent opinion was within its power to summon the Sub-Registrar, Medchal-Malkajgiri invoking powers conferred under Order 16 Rule 14 of CPC in an application filed under Order 16 Rule 1 of CPC. However, the Respondent No.1 was not diligent in preferring the subject interlocutory applications at the time of final arguments, without offering sufficient cause for delay in omitting to list the Sub-Registrar as a witness under Order 16 Rule 1 of CPC. Therefore, this court is of the view that, the prejudice

caused to the Petitioners by the Respondent No.1's negligence should be compensated by way of costs.

28. Accordingly, the present Civil Revision Petition is dismissed. The order dated 30.11.2022 in I.A.No.412 of 2022 and I.A.No.413 of 2022 in OS.No.348 of 2010 passed by the II Additional District Judge, at Medchal District is sustained, subject to the Respondent No.1 paying costs of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the Petitioners.

29. Pending miscellaneous applications if any shall stand closed.

T. VINOD KUMAR, J

Date: 24 .02.2023.

vsv/mrkr

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

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