

**(2022) 04 TEL CK 0035**

**In the Telangana High Court**

**Case No : Civil Miscellaneous Appeal No. 55 Of 2022**

Kondapally Sridhar Reddy

APPELLANT

Vs

Ramesh Reddy Meda

RESPONDENT

**Date of Decision : 12-04-2022**

**Acts Referred:**

Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 3

**Citation : (2022) 04 TEL CK 0035**

**Hon'ble Judges : Satish Chandra Sharma, CJ; Abhinand Kumar Shavili, J**

**Bench : Division Bench**

**Advocate : Kishore Rai, Madhavi Priya Mantena**

## **Judgement**

The present appeal is arising out of an order dated 23.12.2021 passed in I.A.No.363 of 2021 in COP.No.17 of 2021 by the learned Special Judge for Trial & Disposal of Commercial Disputes, Ranga Reddy District at L.B.Nagar.

Learned counsel for the appellant, at the outset, has argued before this Court that the application i.e., I.A.No.363 of 2021, which was an application preferred under Order XXXIX Rules 1 and 2 of CPC for grant of injunction, was turned down referring to large number of documents. However, not a single document has been marked as an exhibit by the Court below and in respect of appendix of evidence and witnesses examined, again "NIL" has been written. It has been stated that as per Rules 51 and 60 of the Civil Rules of Practice, the documents referred to by affidavit are required to be marked as exhibits and the same has not been done in the present case. It has also been stated that the practice of not marking the documents as exhibits was considered by this Court in Civil Revision Petition No.1234 of 2020 decided on 28.07.2021 and the High Court has issued a Circular dated 28.09.2021.

The Circular dated 28.09.2021 is reproduced as under:-

"HIGH COURT FOR THE STATE OF TELANGANA

CIRCULAR

Sub: Subordinate Courts – Directions of the Hon’ble High Court in Civil Revision Petition No.1234 of 2020, dated 28 -07-2021 – Strict adherence to Rules 51 and 60 of the Civil Rules of Practice with regard to marking of documents – Regarding.

Ref: Order of the High Court in C.R.P.No.1234 of 2020, dated 28-07-2021.

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Attention of all the Unit Heads and Judicial Officers in the State of Telangana is invited to the order of the Hon’ble High Court in C.R.P.No.1234 of 2020, dated 28-07-2021, wherein all the Subordinate Courts are directed to mark the documents filed by the parties to the Interlocutory Applications, in strict adherence to Rules 51 and 60 of the Civil Rules of Practice, before deciding the said applications.

The Rules 51 and 60 of the Civil Rules of Practice are extracted hereunder:

“51. Documents referred to in affidavit:-

Document referred to by affidavit shall be referred to as exhibits and shall be marked in the same manner as exhibits admitted by the court and shall bear the certificate in Form No.16 which shall be signed by the officer before whom the affidavit is taken.

60. Proof of facts by affidavit:-

Any fact required to be proved upon an interlocutory proceeding shall unless otherwise provided by these, rules, or ordered by the court, be provided by affidavit but the Judge may, in any case, direct evidence to be given orally, and thereupon the evidence shall be recorded, and exhibits marked, in the same manner as in a suit and lists of the witnesses and exhibits shall be prepared and annexed to the judgment.”

Therefore, while communicating the order of the High Court in C.R.P.No.1234 of 2020, dated 28-07-2021 all the Judicial Officers are hereby directed to ensure strict adherence to Rules 51 and 60 of the Civil Rules of Practice while disposing of Interlocutory Applications.

Any deviation to the above will be viewed seriously by the High Court.

Receipt of this Circular may kindly be acknowledged.

Sd/-

REGISTRAR (VIGILANCE)”

This Court, after careful consideration of the aforesaid Circular and the Civil Rules of Practice is of the opinion that the documents should have been marked while

passing the order in respect of the application preferred under Order XXXIX Rules 1 and 2 of CPC.

Resultantly, the impugned order dated 23.12.2021 is hereby set aside and the matter is remanded back to the Court below to proceed ahead in accordance with law keeping in view Rules 51 and 60 of the Civil Rules of Practice and the executive instructions issued on the subject dated 28.09.2021. The parties shall appear before the Court below on 25.04.2022. It is needless to mention that the Court below, without being influenced by its earlier order, shall pass an appropriate order in accordance with law on merits. The Court below shall also make all possible endeavour to decide the matter at an early date.

The appeal is accordingly allowed.

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