

(2023) 04 TEL CK 0011

In the Telangana High Court

Case No : Civil Revision Petition No. 596 Of 2023

S.Hanumakka And Others

APPELLANT

Vs

Boya Chinthalaiah @ Mekala Chinthalaiah And Others

RESPONDENT

Date of Decision : 11-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 227

Code Of Civil Procedure, 1908 — Order 8 Rule 1A, Order 8 Rule 1A(3)

Citation : (2023) 04 TEL CK 0011

Hon'ble Judges : Surepalli Nanda, J

Bench : Single Bench

Advocate : Balgekar Akash Kumar, K.Indraja

Final Decision : Dismissed

Judgement

1. This Civil Revision Petition is filed against the order dated 20.01.2023 in I.A.No.890 of 2022 in O.S.No.234 of 2024 on the file of the Principal Junior Civil Judge, at Gadwal.

2. The parties are referred to as they are arrayed in the suit before the Lower Court.

3. The defendants filed I.A.No.890 of 2022 under Order 8 Rule 1-A Sub-rule 3 of C.P.C. seeking leave of the Court to file the proceedings in file No.A/1587 of 2013, dated 14.11.2013 issued by the Tahasildar Ghattu Mandal. The plea taken in that petition is that at the time of filing written statement, a photo copy of the proceedings was filed since the original had been misplaced and the same was traced out and produced before the Court in support of their claim and that if the document is not received they would be put to loss which cannot be compensated.

4. The plaintiffs filed counter to the petition denying the plea taken in the petition. They alleged that the document was obtained by the defendants illegally in collusion with the revenue authorities and that the document is of the year

2013 whereas they (plaintiffs) filed the suit along with the documents of the year 2022 and that the petition is filed to delay the suit proceedings. The lower Court after considering the material on record and the rival contention allowed the petition. Aggrieved thereby the plaintiffs preferred the present civil revision petition.

5. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

PERUSED THE RECORD DISCUSSION AND CONCLUSION

6. As can be seen from the impugned order, the lower Court found that the photo copy of the document in question had not been filed along with the written statement, but however, the Court granted leave for receiving the document by giving the reason that since according to the defendants the document is crucial for their claim. It is of the opinion that dismissing the petition would amount to denial of justice and for that no prejudice would be caused to the plaintiffs if the document is received into Court. Order VIII Rule 1-A C.P.C reads as under:

1-A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.

(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set off or counter claim, he shall enter such document in a list, and shall produce it in court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) 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.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

7. In *Ravi Satish v Edala Durga Prasad and others* reported in 2009 (3) ALT 236 relied upon by the counsel for the revision petitioners a single judge of the erstwhile High Court of Andhra Pradesh while dealing with the provision under Order 8 Rule 1-A C.P.C. held at para 10 as follows:

" Sub Rule (3) of Rule 1A 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 were the subject matter of the applications 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. The contention that no prejudice can be said to have been caused to the respondent/plaintiff has been rejected by the Court below on the ground that their right to file rejoinder based on jurisdictional error nor has its order resulted in such manifest injustice as to necessitate interference by this Court under Article 227 of the Constitution of India. I see no reason to interfere with the discretion exercised by the Court below."

8. The learned counsel for the respondents/defendants relied upon the decision of the Hon'ble Supreme Court in *Sugandhi (dead) v P.Raj Kumar* Rep. by power Agent, dated 13.10.2020 reported in (2020) 10 SCC 706 and in particular, paras 3, 9, and 10 are as under:

"3. The appellants herein are the defendants in the suit, O.S. No.257 of 2014, on the file of the Principal Sub-Judge, Pudukottai, and the respondent is the plaintiff. For the sake of convenience, parties are referred to in their respective positions before the Trial Court. The plaintiff filed the suit for injunction alleging that the defendants are attempting to grab the suit schedule property. When the suit was posted for the evidence of the defendants, they filed an application seeking leave to produce certain documents. It was contended that they had recently traced these documents related to the suit property and that was why they could not produce them along with the written statement. This application was opposed by the plaintiff. The Trial Court by its Order dated 11th October, 2018 dismissed the application. As noticed above, the High Court has confirmed the order of the Trial Court.

9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3).

10. Coming to the present case, the defendants have filed an application assigning cogent reasons for not producing the documents along with the written statement. They have stated that these documents were missing and were only traced at a later stage. It cannot be disputed that these documents are necessary for arriving at a just decision in the suit. We are of the view that the

courts below ought to have granted leave to produce these documents.

and contended that in view of the said decision of the Apex Court leave can be granted for reception of the said document into the Court.

9. In the present case, the reason shown by the defendants for not filing the document along with the written statement is that it was misplaced and it was traced out recently. No doubt, the lower Court found that the defendants in fact, did not file Xerox copy of the document along with the written statement as pleaded by them, but on that ground it is just and improper not to grant leave to receive the document because, the main reason shown by the defendants is that the original proceedings were misplaced and the same was traced out recently and filed into Court along with a petition. The Apex Court in *Sugandhi (dead) v P.Raj Kumar Rep. by power Agent, dated 13.10.2020 reported in 92020) 10 SCC 706* held that the procedure is the hand maid of justice and that the Court should take lenient view when an application is made for production of documents under Order 8 Rule 1-A Sub-Rule 3 of C.P.C.

10. The Apex Court in its judgment dated 17.05.2022 in Civil Appeal No.4096 of 2022 @ SLP (C) No.7452 of 2022 in *Levaku Pdda Reddamma and others v Gottu Mukkala Venkata Subbamma* and another observed as follows:

"We find that the trial Court as well as the High Court have gravely erred in law in not permitting the defendants to produce documents, the relevance of which can be examined by the trial court on the basis of the evidence to be led, but to deprive a party to the suit not to file documents even if there is some delay will lead to denial of justice.

It is well settled that rules of procedure are hand-maid of justice and, therefore, even if there is some delay, the trial Court should have imposed some costs rather than to decline the production of the documents itself.

Consequently, the appeal is allowed. The orders passed by the trial Court and the High Court are set aside. The appellants - defendant Nos. 2 to 5 are permitted to file the documents and to prove the same in accordance with law.

11. Taking into consideration the law laid down by the Apex Court in *Sugandhi (dead) v P.Raj Kumar Rep. by power Agent, dated 13.10.2020 reported in 92020) 10 SCC 706* and also the judgment of the Apex Court dated 17.05.2022 passed in *Levaku Pdda Reddamma and others v Gottu Mukkala Venkata Subbamma* and another in Civil Appeal No.4096 of 2022 @ SLP (C) No.7452 of 2022, this Court is of the firm opinion that the lower Court did not commit any impropriety, irregularity or illegality in having granted leave for reception of the said subject document into Court.

12. In view of the foregoing discussion, there are no merits in the present civil revision petition and accordingly, the same is dismissed. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand dismissed.