

THE HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR

C.R.P. No.1765 of 2022

ORDER:

This revision petition has been filed against the order dated 19.01.2022 passed in I.A. No.265 of 2020 in O.S. No.24 of 2013 by the learned II Additional District Judge, Karimnagar.

2. The revision petitioners and the respondents herein are the plaintiffs and the defendants, respectively, in the said suit.

3. The revision petitioners have filed a suit in O.S. No.24 of 2013 for declaration of title and recovery of possession of the suit land on the file of the II Additional District Judge, Karimnagar. While so, when the matter is at the stage of arguments, an application in I.A. No.265 of 2020 under Order VII Rule 14(3) read with 151 CPC was filed with a prayer to receive the documents i.e., Certified Copy of Panchanama along with copies of sketch map pertaining to the survey of the suit land by the MC Inspector. The Court below dismissed the said application vide its order dated 19.01.2022 holding that the suit is at the fag end of the disposal and more particularly the evidence of the plaintiffs is closed long back and the suit is of the year 2013. Aggrieved by the said order, the petitioners have filed the present revision petition.

4. Before the Court below, the learned Government Pleader had vehemently opposed the petition stating that the documents shall not be received at the fag end of the suit and he placed reliance on the judgment of this Court in **Choudari Rajesham Vs. Choudari Lingaiah (died) and another reported in (2019) 6 ALT 583 (TS)**.

5. The learned counsel appearing for the revision petitioners submitted that the documents sought to be received by the Court below were public documents and as such, no prejudice would be caused to the respondents. Further, sufficient cause was shown that there is no delay in filing such an application as the same was came to be filed during the course of hearing of an application in I.A. No.813 of 2019. Advocate Commissioner filed his report in I.A. No.813 of 2019. In support of his claim, he placed reliance on the order dated 17.05.2022 passed in Civil Appeal No.4096 of 2022 by the Hon'ble Supreme Court and submitted that the party should be permitted to produce documents if there is some delay. He also submitted that it is a settled principle of law that an application under Order VII Rule 14(3) of CPC can be filed even during the hearing of the suit if sufficient cause is shown and that the petitioner has shown the sufficient reason that he has recently filed the counter/objection petition to the Commissioner's report and these documents are in support of said objection petition, but for the sake of petition to receive the said documents he could not file it earlier and the delay, if any, is not intentional but only accidental and fit to be condoned.

The Court below without proper appreciation of the said submissions erroneously dismissed the said application.

6. *Per contra*, the learned Government Pleader appearing on behalf of the respondents submitted that according to the revision petitioners the alleged documents were obtained prior to filing of the suit but they never mentioned anything about existence of those documents. It was further submitted that both the parties have completed their evidence and Advocate Commissioner had also filed his report and at this stage, the petitioners only to cover up the lacunae and to protract the matter filed the said application and further submitted that the Order VII Rule 14(3) of CPC contemplates that a document which ought to be produced in the Court or entered in the list to be added or annexed to the plaint, but in the subject suit the alleged document was neither produced in the Court nor entered in the list of documents accordingly. In view of the same, the Court below did not commit any error in passing the impugned order and therefore, this revision petition is devoid of merits and is liable to be dismissed.

7. Heard the learned counsel appearing for the revision petitioners and the learned Government Pleader appearing for the respondents and perused the material made available on the record.

8. It appears from the record that the revision petitioners/plaintiffs have filed the subject suit for declaration of title and recovery of possession of suit land bearing Sy.No.1216/A admeasuring Acs.11.59

guntas on the alleged boundaries situated at Metpally village. During pendency of the said suit, an Advocate Commissioner was appointed to demarcate the suit land and he submitted his report stating that there are structures and adjacent thereto there are several residential houses existing in the lands in the survey numbers in question and therefore, he came to the conclusion that the land in the given survey numbers cannot be demarcated. Subsequently, it appears that the petitioners filed counter cum objection petition to the Commissioner's report and to that the 3rd respondent appears to have filed counter affidavit to the objections raised by the petitioners/plaintiffs. Thereafter, the petitioners have filed an application in I.A. No.265 of 2020 in the subject suit under Order VII Rule 14(3) read with Section 151 CPC to receive the alleged documents stating that the document is very essential to prove their case. The cause shown in the affidavit is that the document is a public document and the parties to the suit are fully aware about the survey as the document was issued by the very MC Inspector who is under the control of the respondent/defendant No.1.

9. It is pertinent to observe here that the Commissioner filed his report in the month of February, 2020 and the counter cum objection petition was filed by the petitioners/plaintiffs in the month of March, 2020. Further, I.A. No.265 of 2020 under Order VII Rule 14(3) was filed by the petitioners/plaintiffs in the month of September, 2020. It is not explained as to why the petitioners/plaintiffs did not choose

to file the documents by way of required application at the time of filing of the counter cum objection petition to the Commissioner's report or along with it or immediately thereafter. Further, the delay caused between the period of filing of counter cum objection petition and filing of I.A. No.265 of 2020 under Order VII Rule 14(3) was not explained properly except stating that they recently filed counter cum objection petition to the Commissioner's report and these documents are in support of said objection petition, but for the sake of petition to receive the said documents, they could not file it earlier and the delay if any is not intentional only accidental and fit to be condoned. It is also observed that the alleged documents that were sought to be received in the subject suit are also not filed along with this revision petition so as to look into it. The subject suit appears to be at the stage of arguments, the documents even if directed to be received, there would be no possibility for considering the same as evidence is completed and the suit is at the advance stage of arguments.

10. In support of the claim of the revision petitioners, the learned counsel for the petitioners placed reliance on the order dated 17.05.2022 passed in Civil Appeal No.4096 of 2022 by the Hon'ble Supreme Court and submitted that the party should be permitted to produce documents if there is some delay. As could be seen from the said order it appears that the appellant therein sought permission to produce additional documents in terms of Order VIII Rule 1 of CPC and the stage of the suit therein was not mentioned but it appears

that the suit was at the stage of evidence and therefore, the Hon'ble Supreme Court found 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."* In the case on hand, it appears that the evidence of both the parties have completed and the stage of the subject suit is at the fag end. Therefore, the facts and circumstances of the case relied on by the learned counsel for the revision petitioners and the facts and circumstances of the present case are different and therefore, the said order is not applicable to the present case.

11. Further, the learned counsel for the revision petitioners submitted that it is a settled principle of law that an application under Order VII Rule 14(3) of CPC can be filed even during the hearing of the suit if sufficient cause is shown and that the petitioner has shown the sufficient reason. In this regard, it is necessary to extract the Order VII Rule 14(3) of CPC, which reads as under:

**"14. Production of document on which plaintiff
sues or relies.-**

(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver

the document and a copy thereof, to be filed with the plaintiff.

(2) Where any such documents not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory"

12. From the above it is clear that the indulgence of the Court would be warranted and the relief granted to the parties to the proceedings is subject to the Court being satisfied of the reasons for not bringing the documents on record at the earliest point of time.

13. This Court while dealing with similar issue in the case of **Syed Mohammed Vs. Syed Moinuddin (died) and others**¹ held at paras 5 to 8 held as under:

"5. As per Order 7 Rule 14 (3) C.P.C., the indulgence that is to be granted to the parties to the proceedings is subject to the Court being satisfied of the reasons for not bringing the documents on record at the earliest point of time.

¹ 2021 (3) ALD 480 (TS)

6. After amendment of C.P.C. by Act 46 of 1999 with effect from 01.07.2002, it is mandatory for a party to the proceedings to enclose all the documents in his possession along with the plaint and further, mention in the list of documents, which he seeks to rely on, and with the further explanation that if a particular document mentioned in the list is not available, the reasons for the same. Likewise, Order 14 Rule 3 C.P.C. while giving discretion to the Court to allow a document, which ought to have been filed along with the plaint or which was mentioned in the list, to be brought on record at a subsequent point of time, the Court is required to satisfy that there were valid and justifiable reasons for the party seeking to bring the document on record at the later point of time.

7. In the present case, admittedly, the document which the petitioner seeks to bring on record is dated 23.02.2012 and the petitioner is a party to the said proceedings. However, there was no explanation forthcoming for not bringing on record the said document.

8. The argument of the learned counsel for the petitioner that this Court while remanding the matter on 27.07.2007 had given liberty to the parties to amend the pleadings or adduce additional evidence, if any, would not justify bringing on record the document dated 23.02.2012 in 2017. The reason stated in the affidavit filed in support of the Application is that the petitioner did not have the document and immediately after obtaining certified copy of it, the same has been placed on record. But, there is no mention as to why the same could not be placed at the earliest point of time i.e., immediately after the proceedings were issued or within the reasonable time. However, as per the

procedure prescribed under C.P.C. as well as the Evidence Act, the plaintiff would have right of adducing evidence by way of examination-in-chief, followed by cross-examination and thereafter, re-examination, likewise, the defendants' evidence. There being no dispute that the matter is at the stage of arguments, at this point of time, even assuming that the said document is required to be brought on record, directed to be received, there is no possibility for considering the said document as evidence, as, once again, an application is required to be made by the plaintiff seeking the said document to be marked and thus, reopening the enquiry proceedings setting at naught the entire exercise which has been carried out earlier. In this view of the matter, this Court does not find any infirmity in the order passed by the trial Court."

14. In the present case, it is noticed that the alleged documents were obtained by the revision petitioners/plaintiffs prior to filing of the suit and the Court below has categorically held that the plaintiffs have not assigned any reasons for their not filing those documents along with the plaint or subsequently before the conclusion of evidence of revision petitioners/plaintiffs.

15. The petitioner except stating that the document sought to be filed is a public document and the delay if any was not intentional but only accidental and fit to be condoned had not mentioned as to how the said document is essential to decide the controversy in the suit. The petitioner had nowhere pleaded the existence of the document in the plaint and its relevance to the *lis*. Apart from that the petitioner in the I.A. No.265 of 2020 has not mentioned any details of document

with reference to source, date of document and the proof of relevancy of the same.

16. Before the learned trial Court, the learned Government Pleader placed reliance on the judgment rendered in **Choudari Rajesham Vs. Choudari Lingaiah (died) and another²** and the relevant paras 11 and 12 reads as under:

“11. Order VII Rule 14 CPC requires the plaintiff to file all the documents on which he relies on, along with the plaint, and to explain in whose custody the documents were if he was unable to file them at that time. The plaintiff is, however, permitted under Order VII Rule 14(3) CPC to file documents which ought to have been filed along with the plaint, subsequently, if leave is obtained by him for filing them at a later stage.

12. It has been held by this Court that grant of leave is not automatic and unless valid reasons are furnished for not filing documents along with the plaint, and in such circumstances, leave cannot be granted to file document at a later stage. The Court is not a post office to suffer mechanical orders to these applications.”

17. In the case on hand, the stage of the suit is at argument stage and in the backdrop of these circumstances, it is pertinent to examine the scope of Order 18 Rule 17-A, which was omitted by the Act 46 of 1999 with effect from 01.07.2002.

² 2019 (6) ALD 583 (TS)

Prior to omission it read as:

“17-A. Production of evidence not previously known or which could not be produced despite due diligence.- Where a party satisfies the Court that, after exercise of due diligence, any evidence was not within his knowledge or could not be produced by him at the time when that party was leading his evidence, the Court may permit that party to produce that evidence at a later stage on such terms as may appear to it to be just.”

18. The Hon’ble Supreme Court in the case reported in **K.K. Velusamy Vs. N. Palanisamy**³ had explained the scope of Order 18 Rule 17-A, the relevant paras reads as under:

“13. The Code earlier had a specific provision in Order 18 Rule 17-A for production of evidence not previously known or the evidence which could not be produced despite due diligence. It enabled the court to permit a party to produce any evidence even at a late stage, after the conclusion of his evidence if he satisfied the court that even after the exercise of due diligence, the evidence was not within his knowledge and could not be produced by him when he was leading the evidence. That provision was deleted with effect from 1.7.2002. The deletion of the said provision does not mean that no evidence can be received at all, after a party closes his evidence. It only means that the amended structure of the Code found no need for such a provision, as the amended Code contemplated little or no time gap between completion of evidence and commencement and conclusion of arguments. Another reason for its deletion was the misuse thereof by the

³ (2011) 11 Supreme Court Cases 275

parties to prolong the proceedings under the pretext of discovery of new evidence.

14. The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for re-opening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.

20. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application.

21. Ideally, the recording of evidence should be continuous, followed by arguments, without any gap. Courts should constantly endeavour to follow such a time schedule. The amended Code expects them to do so. If that is done, applications for adjournments, re-opening, recalling, or interim measures could be avoided. The more the period of pendency, the more the number of interlocutory applications which in turn add to the period of pendency.”

19. From the above, it is clear that the reason for deletion of Order 18 Rule 17-A was the misuse thereof by the parties to prolong the proceedings under the pretext of discovery of new evidence.

20. In the instant case, since the subject suit is of the year 2013 and admittedly the suit is at the stage of fast end of arguments, giving any scope to the petitioner/plaintiff by permitting to file additional documents at a belated stage is only to protract the case. Hence, the observations made by the learned trial Court were right and accordingly, this Court do not find any error in dismissing the I.A. No.265 of 2020 in O.S. No.24 of 2013 and as such, this revision petition is liable to be dismissed.

Accordingly, this revision petition is dismissed. There shall be no order as to costs.

As a sequel, miscellaneous applications, if any pending, shall stand closed.

Date: 28.09.2022

JUSTICE N.V. SHRAVAN KUMAR

Note: L.R. Copy to be marked.
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