

*** THE HON'BLE SRI JUSTICE B KRISHNA MOHAN**
+ CIVIL REVISION PETITION Nos. 1461, 1462, 1463,
1512 and 1650 of 2023

% 21.09.2023

CRP No.1461 of 2023:

Between:

K. J. Reddy (K. Janardhan Reddy), @
Konikanti Janardhan Reddy, Aged
about 61 years, Hindu, Business,
H.No. 46-1, Joharapuram Road,
Kurnool and another.

....Petitioners

And

\$ M. Bhaskar Reddy, S/o. Late M.
Ranga Reddy, Hindu, Aged about 59
years, Business, H.No. 81-27-5-1, Ram
Rahim Nagar, Kallur, Kurnool District.

....Respondent

CRP No.1462 of 2023:

Between:

K. J. Reddy (K. Janardhan Reddy), @
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about 61 years, Hindu, Business,
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....Respondent

CRP No.1463 of 2023:

Between:

K. J. Reddy (K. Janardhan Reddy), @
Konikanti Janardhan Reddy, Aged
about 61 years, Hindu, Business,
H.No. 46-1, Joharapuram Road,
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Ranga Reddy, Hindu, Aged about 59
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Rahim Nagar, Kallur, Kurnool District.

....Respondent

CRP No.1512 of 2023:

Between:

K. J. Reddy (K. Janardhan Reddy), @
Konikanti Janardhan Reddy, Aged
about 61 years, Hindu, Business,
H.No. 46-1, Joharapuram Road,
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CRP No.1650 of 2023:

Between:

K. J. Reddy (K. Janardhan Reddy), @
Konikanti Janardhan Reddy, Aged
about 61 years, Hindu, Business,
H.No. 46-1, Joharapuram Road,
Kurnool and another.

....Petitioners

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....Respondent

! Counsel for the petitioner : Sri Vivekananda Virupaksha.

^ Counsel for the respondent : Ms. M. Siva Jyothi.

<Gist:

>Head Note:

? Cases referred:

¹ 2012(5)ALD 243

¹ (2020)10 SCC 706

¹ 2022 (3) Civil C (S.C)

¹ (1994) 4 SCC 659

¹ 2018 2 ALD 470

¹ 2013 LawSuit (SC) 171

¹ 2011 LawSuit (SC) 271

HIGH COURT OF ANDHRA PRADESH
+ CIVIL REVISION PETITION Nos. 1461, 1462, 1463,
1512 and 1650 of 2023

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CRP No.1512 of 2023:

Between:

K. J. Reddy (K. Janardhan Reddy), @
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....Respondent

CRP No.1650 of 2023:

Between:

K. J. Reddy (K. Janardhan Reddy), @
Konikanti Janardhan Reddy, Aged
about 61 years, Hindu, Business,
H.No. 46-1, Joharapuram Road,
Kurnool and another.

....Petitioners

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\$ M. Bhaskar Reddy, S/o. Late M. Ranga Reddy, Hindu, Aged about 59 years, Business, H.No. 81-27-5-1, Ram Rahim Nagar, Kallur, Kurnool District.

....Respondent

DATE OF ORDER PRONOUNCED: 21.09.2023.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE B KRISHNA MOHAN

1. Whether Reporters of Local newspapers may be allowed to see the Order? Yes/No
2. Whether the copies of order may be marked to Law Reporters/Journals? Yes/No
3. Whether Your Lordships wish to see the fair Copy of the Order? Yes/No

JUSTICE B KRISHNA MOHAN

IN THE HIGH COURT OF ANDHRA PRADESH:: AMARAVATI

**THE HON'BLE SRI JUSTICE B KRISHNA MOHAN
THURSDAY, THE 21ST DAY OF SEPTEMBER, TWO
THOUSAND AND TWENTY THREE**

**CIVIL REVISION PETITION Nos. 1461, 1462, 1463, 1512
and 1650 of 2023**

CRP No.1461 of 2023:

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Konikanti Janardhan Reddy, Aged
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....Respondent

CRP No.1512 of 2023:

Between:

K. J. Reddy (K. Janardhan Reddy), @
Konikanti Janardhan Reddy, Aged
about 61 years, Hindu, Business,
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Kurnool and another.

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M. Bhaskar Reddy, S/o. Late M. Ranga
Reddy, Hindu, Aged about 59 years,
Business, H.No. 81-27-5-1, Ram
Rahim Nagar, Kallur, Kurnool District.

....Respondent

CRP No.1650 of 2023:

Between:

K. J. Reddy (K. Janardhan Reddy), @
Konikanti Janardhan Reddy, Aged
about 61 years, Hindu, Business,
H.No. 46-1, Joharapuram Road,
Kurnool and another.

....Petitioners

And

M. Bhaskar Reddy, S/o. Late M. Ranga Reddy, Hindu, Aged about 59 years, Business, H.No. 81-27-5-1, Ram Rahim Nagar, Kallur, Kurnool District.

....Respondent

COMMON ORDER:

Heard the learned counsel for the petitioners and the learned counsel for the respondent.

2. These revisions are filed against the common order passed in I.A.No. 138 of 2020, I.A.No. 140 of 2022 and I.A.No. 143 of 2022 and docket orders in I.A Nos. 137 of 2022 and I.A.No. 141 of 2022 in O.S.No. 56 of 2017 on the file of VI Additional District Judge, Kurnool dated 14.03.2023 in rejecting to receive the documents mentioned in I.A.No. 138 of 2022 and recall PW1 for marking of those documents.

3. The learned counsel for the petitioners submits that the petitioners are the petitioners in the above said I.As and plaintiffs in the suit. The respondent is the respondent in the I.As and the defendant in the suit. The suit is filed in O.S.No. 56 of 2017 on the file of VI Additional District Judge, Kurnool by the petitioners against the respondent as defendant in the said suit seeking declaration of title and grant of permanent

injunction with respect to the suit schedule property to an extent of Ac. 3.95 cents in Sy.Nos. 414/3, 414/1A and 414/1B. In the plaint of the suit, it is stated that one Mr. Chennaiah and E.C. Manohar also filed O.S.No. 19 of 2003 seeking injunction against the government when it tried to interfere with the possession and enjoyment of the suit schedule property therein and obtained interim injunction during the pendency of the suit. Subsequently, the said suit was decreed.

4. The learned counsel for the petitioners submits that against the said suit the first appeal is pending before the Hon'ble High Court. Now that the present suit is at the stage of defendants' evidence. The documents filed along with the plaint were already marked as exhibits during the course of plaintiffs' evidence. However, the documents relating to O.S.No. 19 of 2003 decreed by the Additional Senior Civil Judge, Kurnool are not marked in the present suit which may cause prejudice to the case of the petitioners/plaintiffs in establishing their title for the said property. Hence the petitioners filed the above said I.As before the trial court after obtaining those documents as mentioned in the above said

I.A with leave application to recall PW1 for marking of those documents. The trial court after considering those I.As on merits rejected the same on the ground that the documents which are sought to be filed by the petitioner are the certified copies of the documents in O.S.No. 19 of 2003 which was disposed off by the learned Additional Senior Civil Judge in the month of November, 2006 itself. Therefore, it is very clear that there was every possibility of getting certified copies of documents in O.S.No. 19 of 2003 from the said court for filing the same along with the plaint in the present suit but no explanation was given by the petitioners/plaintiffs as to why they could not be filed along with the plaint or atleast by producing the same during the course of evidence of PW1. Unless valid reasons are furnished for non filing of the documents along with the plaint, the court cannot grant leave in a routine manner to file the documents at a later stage. The trial court further observed that the proposed documents do not in any way help the petitioners in proving their title over the suit schedule property. Moreover, there is a direction from the Hon'ble High Court of Andhra Pradesh to dispose of the suit within a reasonable time.

5. The learned counsel for the petitioners submits that in the above said I.As, the petitioners submitted the reasons for non production of those documents either at the stage of filing of the suit or during the course of plaintiffs evidence as they are not available with them and it took some time for them to obtain the certified copies of the same.

6. On the other hand, the learned counsel appearing for the respondent submits that the trial court rightly dismissed the above said I.As since those documents do not in any way be helpful to establish the title of the plaintiffs with respect to the suit schedule property, as there is an abnormal delay in securing those documents that too when the earlier suit was disposed of in the month of November, 2006 itself and there is a pending first appeal before this Hon'ble High Court. The petitioners could have filed those documents along with the plaint itself in the present suit since the present suit was instituted in the year 2017. When the parties are not diligent for production of the relevant documents, the court cannot show any indulgence enabling the parties to fill up their lacunae in the suit proceedings. Hence, she further

supported the common order passed by the trial court as reasoned one and no interference is warranted at this stage.

7. In support of his claim, the learned counsel for the petitioners relied upon the following decisions:

- i. In the matter of **Mr. Anjaneyulu vs. R. Subramanyam Achary** ¹in CRP. No. 5683 of 2011 dated 05.03.2012, the erstwhile High Court of Andhra Pradesh held that even though the reason put forth by the petitioner for the delay in filing the proposed documents is vague, one of those documents being a registered sale deed, it may certainly have a bearing on his defence in the suit. Moreover, those documents were sought to be produced before the commencement of the cross-examination of the respondent/plaintiff. Therefore, the respondent will certainly have an opportunity of explaining the nature of those documents if they are put to him in the cross-examination. Having regard to these circumstances, the lower court ought to have permitted the petitioner to produce the two documents in question.

¹ 2012(5)ALD 243

- ii. In the matter of **Sugandhi (Dead) by L.Rs and Ors. Vs. P. Rajkumar**² in Civil Appeal No. 3427 of 2020 dated 13.10.2020, the Hon'ble Apex Court observed that the 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). 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

² (2020)10 SCC 706

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.

- iii. In the matter of **Levaku Pedda Reddamma and Ors. Vs. Gottumukkala Venkata Subbamma and Ors.** ³in Civil Appeal No. 4096 of 2022 dated 17.05.2022, the Hon'ble Apex Court observed 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

³ 2022 (3) Civil C (S.C)

court and the High Court are set aside. The appellants-Defendants are permitted to file the documents and to prove the same in accordance with law.

- iv. In the matter of **Billa Jagan Mohan Reddy and Ors. Vs. Billa Sanjeeva Reddy and Ors.** ⁴in Civil Appeal No. 2254 of 1994 dated 28.01.1994, the Hon'ble Apex Court observed that it is clear from its bare reading that the parties or their counsel shall be required to produce all the documentary evidence in their possession of power which they intend to rely on to establish their right along with pleadings or before settlement of the issues. The court is enjoined under Sub-rule (2) to receive such documents provided they are accompanied by an accurate list thereof prepared in the prescribed form. If they are not in the party's possession or custody, it shall be filed by the party along with an application to condone the delay in filing them. The explanation for delay is not as rigorous as one filed under Section 5 of the Limitation Act. These documents were not in the possession or custody of the appellant, but they have

⁴ (1994) 4 SCC 659

obtained certified from the revenue authorities and sought to be produced. It is undoubted that there is a delay in production of the said documents. But the trial court had stated that the application was filed at the stage of arguments, seeking to produce those documents and sought to rely upon the documents. It is settled law that, if the documents are found to be relevant to decide the real issue in the controversy and when the court felt that interest of justice requires that the documents may be received, exercising the power under Order 41, Rule 27 C.P.C. the appellate court would receive the documents and consider their effect thereof. When such is the position, when the documents are sought to be produced in the trial court, before the arguments are completed, normally they may be received; an opportunity given to prove them and rebuttal if any and their relevance and effect may have, be considered in deciding the issues arose in the controversy. Under these circumstances, the trial court was not justified in refusing to condone the delay and to receive the documents. The High Court also

committed the same error in not considering the effect in this behalf in the right perspective. The orders are accordingly set aside and the delay in filing the documents is condoned. The trial court is directed to receive the documents, give an opportunity to the parties to prove the documents and if necessary, opportunity to the respondent to rebut the same and then dispose of the references according to law. The appeal is accordingly allowed.

8. On the other hand, the learned counsel appearing for the respondent relied upon the following decisions:

- i. In the matter of **Uppu Hymavathi Mahila Sangam; Gandhinagaram, Anakapally, Visakhapatnam District and Others Vs. Vidyaniketan Public School**⁵, in C.R.P.No. 7152 of 2017 dated 22.12.2017, the learned Single Judge observed that the reasons given by the petitioners as referred to above do not satisfy the twin requirements discussed above. Though a vague averment was made in the affidavit that some of the documents remained with the past executive members,

⁵ 2018 2 ALD 470

it is not specifically pleaded that the so called bylaws and the certificate proposed to be filed also formed part of the said documents. It is not in dispute that both the documents were in existence much prior to the filing of the suit. The fact that they were not filed along with the plaint despite their existence shows that the petitioners were not diligent in filing relevant documents. Moreover, the petitioners failed to explain the relevancy of the proposed documents in determining the real controversy in the suit. Having allowed the evidence to be closed, the petitioners cannot be permitted to wakeup at their leisure and seek to re-open the evidence purportedly on the basis of the advice given by their counsel.

- ii. In the matter of **Bagai Construction and Ors Vs. Gupta Building Material Store** ⁶reported in 2013 LawSuit (SC) 171 dated 27.02.2013 it was observed by the Hon'ble Apex Court that the perusal of the materials placed by the plaintiff which are intended to be marked as bills have already been mentioned by the plaintiff in

⁶ 2013 LawSuit (SC) 171

its statement of account but the original bills have not been placed on record by the plaintiff in its statement of account but the original bills have not been placed on record by the plaintiff till the date of filing of such application. It is further seen that during the entire trial, those documents have remained in exclusive possession of the plaintiff but for the reasons known to it, still the plaintiff has not placed these bills on record. In such circumstance, as rightly observed by the trial court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of judgment, we are of the view that the plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him.

- iii. In the matter of **K. K. Velusamy Vs. N. Palanisamy**⁷dated 30.03.2011 reported in 2011 LawSuit (SC) 271, Hon'ble Supreme Court of India held that whether the application is found to be bonafied and where the additional evidence, oral or documentary, will assist the

⁷ 2011 LawSuit (SC) 271

court to clarify the evidence on the issues and will assist in rendering justice, and the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs. 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.

9. In reply, the learned counsel for the petitioners also relied upon another decision of this Court in C.R.P. No. 7503 of 2018 dated 07.04.2022 in the matter of **Korlepara Kasi Viswanadham vs. Korlepara Ramachandra Rao**, wherein it was held that since the defendant sought to file documents after obtaining their certified copies from the Rent Control Court, where their originals are filed and a specific defence is taken in this regard and their reference was also made in the written statement, there is no illegality or irregularity committed by the trial court in allowing the petition filed by the defendant seeking leave to receive those documents. As rightly observed by the trial court, it is open for the revision petitioner/plaintiff to take appropriate objections when these

documents are tendered in evidence. As such, this court finds that there is no merit in the revision petition.

10. In view of the above said facts and circumstances, the rival submissions made and upon consideration of the above said decisions, it is to be seen that the documents sought to be marked are with reference to the grant of injunction in favour of the petitioners' vendors with reference to the subject property. Admittedly, the petitioners are not the parties to the said suit in O.S.No. 19 of 2003 on the file of Additional Senior Civil Judge, Kurnool. Now that the 1st appeal is pending against the judgment and decree of the said suit. The present suit is at the stage of examination of defendants' evidence. The plaint averments show about the earlier proceedings instituted by the petitioners' vendors in the above said suit against the government. But it is true that these documents were not filed along with the plaint though there is an averment in the plaint. The plaintiff got marked the documents which were shown in the list of documents along with the plaint. Since, it is a declaration of title for the plaint schedule property, the petitioner thought it fit to produce these documents additionally in relation to the

subject property for which he filed the above said I.As and in filing of the same, the delay was tried to be explained saying that it took some time for securing those documents as certified copies. No prejudice would cause, if these documents are marked at this stage in the suit as the adversary will have an opportunity to cross-examine the same and rebut those documents. The judgments of the Hon'ble Apex Court as referred above also show a lenient view in the matter of marking of documents. As the suit on hand is pending at the stage of adducing of evidence during the course of trial, the trial court ought to have allowed atleast I.A Nos. 138 of 2022 and 143 of 2022 only to receive the certified copies of the documents in O.S.No. 19 of 2003 on the file of Additional Senior Civil Judge, Kurnool and recall PW1 for marking of those documents to meet the ends of justice, if necessary by imposing necessary costs payable to the other side. As the above said I.As are dismissed by the trial court erroneously, the same are herewith set aside to meet the ends of justice by directing the petitioners to pay costs of Rs. 5,000/- to the other side before the trial court within a period of two (2) weeks from the date of receipt of

this order. The trial court shall allow those documents of certified copies as contended in I.A. No. 138 of 2022 and recalling of PW1 to mark those documents and cross-examination thereon. After such reopening, the respondent/defendant shall be given an opportunity to cross-examine the PW1 and contradict those documents in accordance with law. Accordingly, the trial shall be proceeded with accordance with law. However, it is made clear that as the suit is of the year 2017, the trial court is directed to dispose of the suit as expeditiously as possible on it's own merits as per law preferably within a period of six (6) months from the date of receipt of this order for which both the parties shall co-operate for early disposal of the suit.

11. Accordingly, the C.R.P. Nos. 1461, 1463 and 1650 of 2023 are disposed off and the C.R.P.Nos. 1512 and 1462 of 2023 are dismissed. There shall be no order as to costs.

Interim order if any, deemed to have been vacated.

As a sequel, Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE B KRISHNA MOHAN

21.09.2023

Note: L.R. copy to be marked
B/o: UPS