

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CIVIL REVISION PETITION No. 1348 OF 2022

ORDER:

The present Revision is filed aggrieved by the order dated 10.12.2021 passed in I.A.No. 299 of 2021 in A.S.No. 4 of 2016 whereby the Application filed by the appellant under Order XVI Rule 6 read with Section 151 C.P.C. was dismissed.

2. The petitioner herein has filed the suit O.S.No. 124 of 2010 on the file of the Senior Civil Judge's Court at Miryalaguda for recovery of Rs.2,74,351/- with interest thereon and costs stating that as per the directives of the respondents, he has planted 1.15 lakh plants and supplied them to the respondents but the respondents, as against Rs.5,00,000/-, released Rs.21,83,590/- only and they failed to pay the balance amount of Rs.2,16,410/-. The said suit was dismissed *vide* judgment and decree dated 24.04.2015. Against that, the petitioner, who is the plaintiff in the suit, has filed Appeal ie. A.S.No. 4 of 2016 before the VIII Additional District Judge at Miryalaguda. While the said Appeal is pending, the present I.A. is filed contending that the Forest Department entrusted benefit scheme of growing nursery to him for the period 2005-2007 and under the said scheme, he has grown the plants and supplied

them to the Forest Department, for which the Forest Department maintained the records and that he tried his best to get those records under the Right to Information Act. Hence, summoning the proposed records / documents is essential to prove his case in the Appeal.

The Court below has dismissed the said Petition holding that the petitioner can only adduce evidence in Appeal as per Order XLI Rule 27 C.P.C. and the Application that is filed by the petitioner does not satisfy the ingredients of Order XLI Rule 27 C.P.C. Another ground on which this Application is dismissed is that the documents sought to be summoned are in the custody of the respondents who are public officers and Rule 129(3) of the Civil Rules of Practice says that no Court shall issue summons for production of documents by a public officer unless it considers the production of original is necessary or is satisfied that an Application for a certified copy has been duly made and has not been granted. But it is not the case of the petitioner / appellant that production of subject documents in original itself is necessary for deciding the dispute. Learned Judge came to the conclusion that though it is stated that in spite of his best efforts, the petitioner could not secure it, nothing has been stated or placed on record to show that what

are the efforts that are put in by the petitioner to produce the documents.

3. Learned counsel appearing for the petitioner Sri Kowturu Pavan Kumar submits that the learned Judge without appreciating the affidavit filed in support of the said Petition has rejected the Application on the ground that the petitioner did not file any proof to the effect that he tried to get the records under the RTI Act. He submits that the same has been mentioned in para 2 of the affidavit. Further, learned counsel submits that the bar under Rule 129(3) of the Civil Rules of Practice cannot be a ground to dismiss the Application. He submits that without appreciating the necessity and requirement of the petitioner, which is a genuine one, this Application is dismissed.

4. The Application that is filed by the petitioner is under Order XVI Rule 6 C.P.C. to produce certain documents. Though the Application is filed under Order XVI Rule 6 CPC., the petitioner wants to adduce additional evidence in the Appeal which is governed by Order XLI Rule 27 C.P.C.

5. *Order XLI Rule 27 of the CPC.* reads as under:

Production of additional evidence in Appellate Court:- (1)

The parties to an appeal shall not be entitled to produce

additional evidence, whether oral or documentary, in the Appellate Court. But if---

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or documents to be produced or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

6. The petitioner to satisfy or to maintain the Application under Order XLI Rule 27 to adduce additional evidence at the appellate stage has to first satisfy the Court that in spite of his due diligence, he could not adduce such evidence before the Court. This fact has not been mentioned. Even this Application he could have filed before the trial Court at that point of time. When once the suit is dismissed and it is at the appellate stage, filing this sort of an Application is not within the purview of Order XLI Rule 27 C.P.C. As the petitioner failed to satisfy the requirement under Order XLI Rule 27 CPC., the Court has rightly dismissed the I.A. filed by him. This Court

therefore, does not find any reason to interfere with the well-considered order passed by the Court below.

7. The Civil Revision Petition is accordingly dismissed.
There shall be no order as to costs.

8. Consequently, the miscellaneous Applications, if any shall stand closed.

LALITHA KANNEGANTI, J

04th August 2022

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