SUPREME COURT OF INDIA

Ushodaya Publications (P) Ltd.

Vs.

Valluri Venkateswara Rao (D) By Lrs.

Crl.A.No.46 of 2004

(Shivaraj V. Patil and D. M. Dharmadhikari JJ.)

07.01.2004

ORDER

1. Leave granted.

2. This appeal is filed by the defendant in Original Suit No. 427 of 1984. In the suit, the plaintiff filed I.A. No. 6797 of 1992 to striking-off the defence of the defendant on the ground that the defendant willfully and deliberately did not produce the two documents sought to be produced by the plaintiff. The trial court, after considering the respective contentions, passed the order rejecting the said interlocutory application filed by the plaintiff to struck-off the defence by its order dated 17th February, 1998. The plaintiff, not satisfied with the said order, filed a revision petition before the High Court. The High Court, allowing the revision petition and setting aside the order passed by the trial court on the said interlocutory application, ordered striking-off the defence of the defendant.

3. Hence, this appeal.

4. The learned counsel for the appellant contended that the High Court was not right and justified in upsetting the order passed by the trial court when the trial court, having due regard to all aspects, passed the order rejecting the interlocutory application filed by the plaintiff. The learned counsel submitted that the documents sought to be produced by the plaintiff could not be produced for various reasons; it was not a case of withholding the documents. On the other hand, the documents were produced in another civil suit to which the plaintiff also was a party; the plaintiff did not plead ignorance of the document having admitted his signature on the document; the plaintiff only wanted to look to the contents of the document which were necessary for the purpose, according to him, for prosecuting the suit effectively; even if, the defendant did not produce the documents, adverse inference could be raised; and on the facts and circumstances of the case, it was not a case where the defence of the defendant should have been struck-off. According to the learned counsel, the High Court committed an error in interfering with the order passed by the trial court, that too, exercising jurisdiction under Section 115 of the *Code of Civil Procedure, 1908*.

5. In opposition, the learned counsel for the respondents made submissions supporting the impugned order. He submitted that, as can be seen from the impugned order, the High Court has also recorded reasons for setting aside the order passed by the trial court. The trial court, in paragraph (13) of its order, has stated thus:

> "In the light of the observations of their Lordships it is very much clear that there must be serious prejudice to be caused to the opposite Party. Admittedly the original lease agreement dated 1.5.1975 was brought before the Court form (from?) the Union Bank of India. The petitioner herein is not disputing the fact that he is a signatory to the original lease agreement. He simply pleads ignorance of the contents of the lease agreement. Merely because the 1st defendant has contended that there was a draft prepared and corrected by the senior counsel of Machilipatnam who was appearing for the petitioner is not a serious matter which will prejudice to the contentions of the petitioner (plaintiff). The petitioner (plaintiff) has filed the suit seeking eviction of the defendants from the schedule property on different grounds. If the draft which is said to have been not traced out by the 1st defendant or not produced before this Court, no prejudice will be caused to the petitioner (plaintiff) and on the other hand, the petitioner can request the Court to draw an adverse inference under Section.114(g) of the Indian Evidence Act. As such in the light of the observations made by their Lordships of the Supreme Court, the request made by the petitioner herein to strike down the defence under Order 11 Rule 17 and 18 and 21 of C.P.C. is not reasonable and such a relief cannot be granted. As I have referred earlier the petitioner himself is prolonging the matter without getting ready in the main suit filed by him by making request to dispose of these petitions which are of no consequence and will not have any bearing over the subject matter of the dispute on hand in the suit and if at all it may be an attempt on the part of the petitioner to seek a shortcut mode of method to obtain possession of the property in case the vakalat of the 1st defendant is rejected and the defence is struck down. I feel there are no merits in this petition also and accordingly it is liable to be dismissed. The points 1 and 2 are held accordingly as against the petitioner."; * and it is on that basis, the interlocutory application was rejected.

6. Looking to the said order, it cannot be said that the view taken by the trial court was either perverse or unreasonable or it exceeded its jurisdiction or acted with material irregularity in passing the said order. It is also observed in the order that no prejudice would be caused to the plaintiff in case the defence of the defendant was not struck-off. This being the position, the High Court, in our view, was not right and justified in interfering with the order passed by the trial court, particularly when no prejudice would be caused to the plaintiff. Hence, this appeal is entitled to succeed. Accordingly, it is allowed. The impugned order is set aside but with no order as to costs.