A JAYARAMDAS AND SONS

v.

MIRZA RAFATULLAH BAIG AND ORS.

MARCH 23, 2004

B [R.C. LAHOTI AND DR. AR. LAKSHMANAN, JJ.]

Code of Civil Procedure, 1908; Order XLI, Rule 27, sub-rule (1), Clause (aa):

C *Suit for issuance of permanent preventive injunction—Dismissed by trial Court—Affirmed by First Appellate Court rejecting the application for adducing additional documents in evidence—Appeal dismissed by High Court—Correctness of—Held: Contents of the documents sought to be added varies with the contents of the copies of the documents on record—It would have* D *material bearing on the issue to be determined—Hence, provisions under Clause (aa) of sub-rule (1) of Rule 27 attracted—Though such ground should have been set out in the petition/application itself to afford an opportunity to opposite party—However, the ends of justice demand that the additional evidence allowed to be produced* **de hors** *deficiency in the application—The documents admitted in evidence—Appellate Court to decide the appeal afresh* E *in accordance with law—Directions issued.*

Plaintiff-appellant filed a suit for issuance of permanent preventive injunction against the respondent-defendant. Trial Court dismissed the suit. Pending appeal before the first Appellate Court, appellant filed an F **application under Rule 27 of Order XLI CPC, to bring additional evidence on record. Both the application and the appeal were rejected by the Appellate Court. High Court rejected the appeal. Hence the present appeal. During pendency of the appeal before this court, appellants obtained the documents in question from the First Appellate Court and thereafter placed it before this Court for consideration.**

G

It was contended by the appellants that the additional documents which were not allowed by the Courts below may be admitted as an additional evidence; that the case may be remanded to the First Appellate Court; and that the contents of the documents available on record and the contents of the documents sought to be produced on record were at

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variance and thus have material bearing on the finding of facts to be arrived at. A

Respondents submitted that the documents were already available on record; and that it was obligatory on the part of the appellant to have set out such grounds in the application itself to lay foundation for applicability of Rule 27 Order XLI CPC. B

Allowing the appeal, the Court

HELD: 1.1. It is true that additional evidence, whether oral or documentary, is not to be admitted by Appellate Court unless a case for admission thereof is made out by reference to clause (a) or (aa) of sub-rule (1) of Rule 27 or unless the Appellate Court requires such evidence to enable it to pronounce judgment or for any other substantial cause within the meaning of clause (b) of the Rule. A perusal of the documents and their comparison with the documents already available on record clearly goes to show that the two are at variance and the effect of such variance determined either way would have a material bearing on the crucial issue arising for decision between the parties. [492-C-D] C D

1.2. It is only when it came to their knowledge that the certified copies obtained from the public officer, having custody of the documents, were not complete copies that they thought of securing another set of certified copies and then seeking leave of the Court, for producing them as an additional evidence in Appellate Court. The case of the appellants for production of additional evidence falls within clause (aa) of sub-rule (1) of Rule 27. It would have been better if such ground was set out specifically in the application so that the opposite party could have had an opportunity of meeting the plea and the First Appellate Court could also have had the provisions of law in its mind for dealing with the appellants' application. However, the ends of justice demand the additional evidence being allowed to be produced *de hors* the deficiency in the application filed by the appellants. [492-B, F] E F

1.3. The documents shall be admitted in evidence by the First Appellate Court, subject to payment of Rs. 5000 by way of costs by the appellants. [492-H; 493-A] G

The Court should proceed to hear and decide the appeal afresh and in accordance with law. It is clarified that this Court has neither touched H

A **upon nor expressed any opinion on the merits of the case. [493-A]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1814 of 2004.

From the Judgment and Order dated 22.8.2003 of the Andhra Pradesh High Court in S.A. No. 619 of 2001.

B

V.R. Reddy, P. Venkat Reddy, P. Keshav Rao and Guntur Prabhakar for the Appellants.

Kapil Sibal, G. Rama Krishna Prasad, K.C. Mittal, Dharmesh and Mohd. Wasay Khan for the Respondent No. 1

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Ranjeet Kumar and John Mathew for the Respondent Nos. 2-4.

The Judgment of the Court was delivered by

R.C. LAHOTI, J. Leave granted.

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A suit for issuance of permanent preventive injunction was filed by the plaintiff-appellants against the defendant-respondents. The suit was dismissed by the trial court. The decree has been maintained by the First Appellate Court as also by the High Court. Feeling aggrieved, the Plaintiff-appellants have filed this appeal by special leave.

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The only submission made by Shri V.R. Reddy, the learned senior counsel for the appellants, is that the First Appellate Court has committed a grave error of law in rejecting the application filed by the appellants under Rule 27 of Order XLI of the Code of Civil Procedure, 1908. It is submitted that if only the application would have been allowed, the additional evidence

F sought to be brought on record by the appellants would have made a material difference in the findings arrived at by the First Appellate Court and the rejection of the application has occasioned a failure of justice.

Before the First Appellate Court, the appellants sought to tender in evidence three documents which are certified copies of public records. The

G application was rejected by the Appellate Court forming an opinion that the application was a bald application not setting out any facts relevant to the exercise of jurisdiction by the Appellate Court by reference to any of the clauses (a), (aa) and (b) of sub-rule (1) of Rule 27 of Order XLI. The prayer was reiterated by the appellants in the High Court but it met with the same

H fate and for the same reasons.

Shri V.R. Reddy, the learned senior counsel for the appellants, has pressed for the admission of the same documents in additional evidence and for the consequent remand to the First Appellate Court. The prayer has been vehemently opposed on behalf of the respondents by their learned counsel, led by Shri Kapil Sibal, Senior Advocate. At one stage it was submitted on behalf of the respondents that the exercise sought to be indulged into by the appellants, would be one in futility inasmuch as the documents which the appellants are proposing to tender in evidence are already available on record. In view of this submission, an adjournment was sought for on behalf of the appellants. It appears that during the pendency of this special leave petition and between the two dates of hearing, the appellants moved the First Appellate Court seeking return of the documents which were filed by them in the First Appellate Court as accompanying the application under Order XLI, Rule 27 of CPC. The First Appellate Court returned the documents on 10.02.2004 and thereafter these documents have been brought to the notice of this Court by placing the same at the hearing. Shri Reddy, the learned senior counsel, has been at pains to demonstrate that the documents already available on record appear to be the similar certified copies but a minute comparative study of the documents reveals that the contents of the documents which the appellants were seeking to be brought on record were at variance with the documents available on record and, therefore, the admission of these documents in additional evidence was all the more necessary inasmuch as the Court shall have to hold which of the two documents carried reliability and that would obviously have a material bearing on the findings of fact to be arrived at.

Shri Kapil Sibal, the learned senior counsel for the respondents, has vehemently urged that Order XLI, Rule 27 of the CPC was an exception to the ordinary rule of admitting evidence in civil cases. Inasmuch as the exercise of discretion under Order XLI, Rule 27 of the CPC in favour of the party seeking such exercise, has the result of almost re-opening the trial which has otherwise stood concluded, care and caution is needed for exercise of such discretion and the power cannot be exercised just for asking. It was obligatory on the part of the appellants to have set out in the application such necessary facts as would lay foundation for the applicability of one of the grounds contemplated by the provision, failing which no fault can be found with the discretion exercised by the First Appellate Court and upheld by the High Court, submitted Shri Kapil Sibal, the learned senior counsel for the respondents.

On 19.03.2004, at the time of hearing, the learned counsel for the

A appellants, produced for the perusal of the Court two out of three documents which were sought to be tendered in evidence before the First Appellate Court and the return whereof was secured by the appellants on 10.02.2004. Shri Reddy submitted that the appellants are limiting their prayer to the admission of these two documents in evidence and would not press for the third one. The two documents have been placed in a closed cover after B perusal by the Court.

It is true that additional evidence, whether oral or documentary, is not to be admitted in Appellate Court unless a case for admission thereof is made out by reference to clause (a) or (aa) of sub-rule (1) of Rule 27 or unless the C Appellate Court requires such evidence to enable it to pronounce judgment or for any other substantial cause within the meaning of clause (b). A perusal of the documents, brought to our notice by the learned counsel for the appellants and their comparison with the documents already available on record, clearly goes to show that the two are at variance and the effect of such variance determined either way would have a material bearing on the D crucial issue arising for decision between the parties.

As already pointed out both the sets of documents are certified copies of public documents. The appellants would not ordinarily suspect or doubt the documents where the certified copies of public documents were secured from the public officer having the custody of such public documents. It is E only when it came to their knowledge that the certified copies were at variance with the originals or were not complete copies that they thought of securing another set of certified copies and then seeking leave of the Court for producing the certified copies obtained by them as an additional evidence in Appellate Court. The case of the appellants for production of additional evidence falls F within clause (aa) of sub-rule (1), abovesaid. It would have been better if such ground was set out specifically in the application so that the opposite party could have had an opportunity of meeting the plea and the First Appellate Court could also have had the provisions of clause (aa) of sub-rule (1) in its mind for dealing with the appellants' application. However, still we feel that the ends of justice demand the additional evidence being allowed to be G produced *de hors* the deficiency in the application filed by the appellants.

The appeal is allowed. The Judgments and decrees passed by the High Court and the First Appellate Court are set aside. The two documents, filed by the appellants in this Court, shall be forwarded by the Registrar (Judicial) of this Court to the First Appellate Court in a sealed cover. The documents H

shall be admitted in evidence by the First Appellate Court, subject to payment of Rs. 5000 by way of costs by the appellants. The First Appellate Court shall, after permitting the production of such two documents by way of additional evidence, proceed to hear and decide the appeal afresh and in accordance with law. A

Before parting we make it clear that we have neither touched upon nor expressed any opinion on the merits of the case. Only production of additional evidence has been permitted. The First Appellate Court shall be free to form its own opinion afresh on all the questions of facts and law arising for decision in the appeal. B

The parties, through their respective counsel, are directed to appear before the First Appellate Court on 19.04.2004. C

S.K.S. Appeal allowed.