

HIGH COURT FOR THE STATE OF TELANGANA

R.O.C.NO.2750/OP CELL/2021

DATE: 28-09-2021

CIRCULAR

Sub: Subordinate Courts - Directions of the Hon'ble High Court in Civil Revision Petition No.1234 of 2020, dated 28-07-2021 - Strict adherence to Rules 51 and 60 of the Civil Rules of Practice with regard to marking of documents - Regarding.

Ref: Order of the High Court in C.R.P.No.1234 of 2020, dated 28-07-2021.

* * *

Attention of all the Unit Heads and Judicial Officers in State of Telangana is invited to the order of the Hon'ble High Court in C.R.P.No.1234 of 2020, dated 28-07-2021, wherein all the Subordinate Courts are directed to mark the documents filed by the parties to the Interlocutory Applications, in strict adherence to Rules 51 and 60 of the Civil Rules of Practice, before deciding the said applications.

The Rules 51 and 60 of the Civil Rules of Practice are extracted hereunder:

"51. Documents referred to in affidavit:

Document referred to by affidavit shall be referred to as exhibits and shall be marked in the same manner as exhibits admitted by the court and shall bear the certificate in Form No.16 which shall be signed by the officer before whom the affidavit is taken.

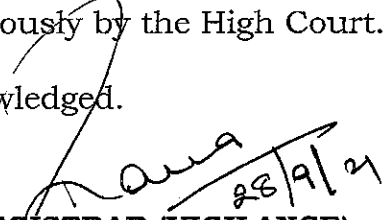
60. Proof of facts by affidavit:

Any fact required to be proved upon an interlocutory proceeding shall unless otherwise provided by these, rules, or ordered by the court, be provided by affidavit but the Judge may, in any case, direct evidence to be given orally, and thereupon the evidence shall be recorded, and exhibits marked, in the same manner as in a suit and lists of the witnesses and exhibits shall be prepared and annexed to the judgment."

Therefore, while communicating the order of the High Court in C.R.P.No.1234 of 2020, dated 28-07-2021 all the Judicial Officers are hereby directed to ensure strict adherence to Rules 51 and 60 of the Civil Rules of Practice while disposing of Interlocutory Applications.

Any deviation to the above will be viewed seriously by the High Court.

Receipt of this Circular may kindly be acknowledged.


28/9/21
REGISTRAR (VIGILANCE)

To

All the Unit Heads in the State of Telangana along with a copy of order in C.R.P.No.1234 of 2020 (with a request to communicate the same to all the Judicial Officers working in their unit for strict compliance of the directions issued therein)

Copy to:

- 1) The Personal Secretaries to the Hon'ble Judges of High Court for the State of Telangana (with a request to place before the Hon'ble Judges)
- 2) The Registrars, High Court for the State of Telangana.
- 3) The Director, Telangana State Judicial Academy, Secunderabad.
- 4) The Member Secretary, Telangana State Legal Services Authority, Hyderabad.
- 5) The Section Officer, Special Officers Section (for codification of circular)
- 6) The Section Officer, 'E' Section (for information)

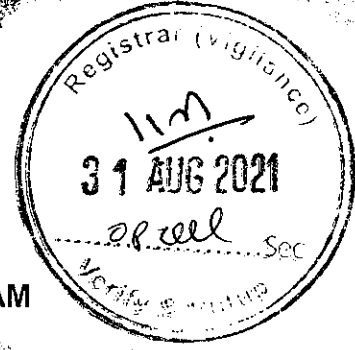
IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

WEDNESDAY, THE TWENTY EIGHTH DAY OF JULY
TWO THOUSAND AND TWENTY ONE

PRESENT

THE HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION NO: 1234 OF 2020



Petition under Article 227 of the Constitution of India aggrieved by the order dated 16.06.2020 in CMA.No.15 of 2018 on the file of the Court of the IV Additional District Judge (FTC) at Nagarkurnool against the order of the Court of the Senior Civil Judge at Nagarkurnool in IA.No.2 of 2018 in OS.No.2 of 2018 dated 07.03.2018.

Between:

1. Chernam Chinna Balmasiah, S/o Buchanna, aged 60 yrs, r/o Bijnapally Village and Mandal proper, Nagarkurnool District. -509203
2. Cheernam Pedda Mallaiah, S/o Kashanna, aged 50 yrs, r/o Bijnapally Village and Mandal Proper, Nagarkurnool District. -509203
3. Cheernam Srsailam, S/o Laxmaiah, aged 45 yrs, r/o Bijnapally Village and Mandal Proper, Nagarkurnool District. -509203
4. Urenki Srisailam, S/o Buchanna, aged 30 yrs, r/o Bijnapally Village and Mandal Proper, Nagarkurnool District. -509203

...PETITIONER(S)

AND

State Teachers Union Telangana State, rep. by its Stae President, B. Bhujanga Rao aged 56 yrs, Occp: Teacher, r/o H.No.3-2-798, S.T.U Bhavan, Kachiguda, Hyderabad.-500027

...RESPONDENTS

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to grant temporary injunction against the respondents and their hechmen from interfering with the suit schedule property set out in petition being enjoyed by the petitioners pending final disposal of main Civil Revision Petition and pass such other order or orders may deem fit and proper in the circumstances of the case.

Counsel for the Petitioners: SRI V. HANUMANTH RAO

Counsel for the Respondent: SRI M. LAKSHMAN RAO

The Court made the following: ORDER

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 1234 OF 2020

ORDER :

This Revision is directed against the judgment dated 16.06.2020 in C.M.A.No. 15 of 2018 on the file of the IV Additional District & Sessions Judge at Nagarkurnool which was filed against the order dated 07.03.2018 in I.A.No. 2 of 2018 in O.S.No. 2 of 2018 on the file of the Senior Civil Judge at Nagarkurnool.

Petitioners herein are the plaintiffs in the suit. They filed I.A.No. 2 of 2018 seeking temporary injunction restraining the respondent, his men, agents, servants, benchmen and other claiming through him from interfering with their peaceful possession of the petition schedule property. The said Application was dismissed and the Appeal filed thereagainst was also dismissed with costs vide judgment under Revision.

One of the grounds raised in the Revision by the petitioners is that notwithstanding the fact that a large number of documents were referred to in the order in I.A.No. 2 of 2018, strangely, in the "appendix of evidence" and in the order under the caption "exhibits marked", both for plaintiffs as well as the defendant, they have been shown as 'NIL'. The appellate Court also while adverting to various documents had recorded 'no documents were marked' which is contrary to the facts on record, thereby the order stands vitiated.

Learned counsel for the appellants particularly referred to para 3 of the judgment under Revision, wherein it was recorded that the plaintiffs had not filed any documents to show the possession, without, in fact, referring to any of the documents and

discussing about the same. The learned counsel had relied on the judgments of the Division Bench of this Court in *T. Bhopal Reddy v. K.R. Lakshmi Bai*¹, *A.P. Mineral Development Corporation Ltd., Hyderabad v. Trimex Minerals Pvt. Ltd., Chennai*² and of the Single Judge in *Aruna Chowhan v. M/s ARKS Cold Storage (P) Limited*³, to support his contention that the documents ought to have been marked.

On the other hand, learned counsel for the respondent had relied on the judgment of the learned Single Judge in C.M.A.No. 416 of 2015 to submit that even in the absence of marking of documents, this Court is entitled to refuse injunction.

This Court, having given conscious thought, had observed that there is some ambiguity arising on account of the observations of the Division Bench in *Bhupal Reddy's case*, wherein it is not categorically held that it is mandatory for the documents to be marked. On further examination, it was found that there is yet another judgment of the Division Bench of this Court in C.M.A.Nos. 527,564 and 607 of 2017, dated 21.07.2017, which, while holding that the Rule regarding marking of documents in terms of the Civil Rules of Practice be adhered to, directed the Registry to issue a Circular to the subordinate courts to mark the documents filed by the parties to the Interlocutory Applications before deciding such Applications. In this context, Rules 51, 60 and 115 of the Civil Rules of Practice may be noted. While Rule 115 deals with marking of documents admitted in

¹ 1998(1) ALD 770 (DB)

² 1998 (1) ALT 182 (DB)

³ 2008(5) ALT 227

evidence, which can be done only at the time of trial, Rule 51 read with Rule 60 caters to the need of the marking of documents for the purpose of disposal of the Interlocutory Applications. Rules 51 and 60, which are more relevant for the purpose of dealing with the issue in the present Revision, are extracted as under:

“ **51. Documents referred to in affidavit:-**

Document referred to by affidavit shall be referred to as exhibits and shall be marked in the same manner as exhibits admitted by the court and shall bear the certificate in Form No. 16 which shall be signed by the officer before whom the affidavit is taken.

60. Proof of facts by affidavit:-

Any fact required to be proved upon an interlocutory proceeding shall unless otherwise provided by these, rules, or ordered by the court, be provided by affidavit but the Judge may, in any case, direct evidence to be given orally, and thereupon the evidence shall be recorded, and exhibits marked, in the same manner as in a suit and lists of the witnesses and exhibits shall be prepared and annexed to the judgment.”

In the light of the above and considering the directions issued by the Division Bench of this Court to issue a Circular if the same is not complied with, as on date, the Registry shall take necessary steps to do the needful clearly directing all the subordinate officers for strict adherence to Rules 51 and 60, while disposing of the Interlocutory Applications. As a matter of fact, this Court had observed in a large number of cases that there is compliance wherein reference was made to the documents filed as 'P' series and 'B' series which is in conformity with Rule 51.

In the facts of the present case, admittedly, since no documents were marked which amounts to failure to comply with Rule 51, the Civil Revision Petition is allowed, setting aside the order 07.03.2018 in I.A.No. 2 of 2018 and the judgment dated

16.06.2020 in C.M.A.No. 15 of 2018 and remanding the matter to the learned Senior Civil Judge at Nakarkunrool to decide the I.A.No. 2 of 2018 afresh. No costs.

In the present case, the pleadings disclose that the respondent / defendant had earlier filed O.S.No. 299 of 1997 along with I.A.No. 668 of 2017 before the Junior Civil Judge's Court at Nagarkurnool seeking injunction against the appellants / plaintiffs in the present case. To avoid conflicting orders and considering that the parties to the suit being one and the same, this Court deems it appropriate to direct O.S.No. 299 of 2017 be transferred and tried along with O.S.No. 2 of 2018 in Senior Civil Judge's Court at Nagarkurnool. The learned Senior Civil Judge shall pass necessary orders after giving opportunity to the parties concerned.

Miscellaneous petitions, if any pending, shall stand closed.

Sd/- T. KRISHNA KUMAR
ASSISTANT REGISTRAR

//TRUE COPY//

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SECTION OFFICER

To,

1. The IV Additional District and Sessions Judge (FTC), Nagarkurnool, Mahabubnagar District.
 2. The Senior Civil Judge, Nagarkurnool, Mahabubnagar District.
 3. The Junior Civil Judge, Nagarkurnool, Mahabubnagar District.
 4. The Registrar (Judicial), High Court for the State of Telangana at Hyderabad.
 5. The Registrar (Vigilance), High Court for the State of Telangana at Hyderabad.
 6. One CC to Sri V. Hanumanth Rao, Advocate [OPUC]
 7. One CC to Sri M. Lakshman Rao, Advocate [OPUC]
 8. Two CD Copies
 9. One Spare Copy
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