

M/S PRIME PROPERTIES

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v.

SANA LAKSHMI DEVI (DIED) THROUGH HER LRS. & ORS.

(Civil Appeal No. 7181 of 2022)

SEPTEMBER 29, 2022

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**[DINESH MAHESHWARI AND BELA M. TRIVEDI, JJ.]**

*Pleadings – Filing of – Suit pending for long, multifarious incidental proceedings – Subsequent pleadings filed by the plaintiff in the form of rejoinder taken on record by Trial Court, in supersession of its earlier order whereby such permission was declined – Order set aside by High Court – On appeal, held: Impugned order set aside but the order passed by the Trial Court is modified – On facts, the defendant Nos. 4 to 11 permitted to place on record their further pleadings in the form of sur-rejoinder but only to the extent of new facts, if any, pleaded in the rejoinder filed by the plaintiff – Thus, sur-rejoinder to remain confined to any such fact, if at all, newly pleaded by the plaintiff in the rejoinder – This particular proposition is required to be adopted in the present matter, in view of several features and factors including two significant factors: one, that under the orders passed by Supreme Court, the trial of the suit is to proceed expeditiously while the matter ought to be assigned a specific priority; and second, that on 31.01.2022, Trial Court had indeed framed additional issues for the trial – No further issues are required to be framed in this matter and all other aspects of the matter, particularly those relating to pleadings be examined by the Trial Court at the time of final disposal of the suit – Code of Civil Procedure, 1908.*

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#### **Disposing of the appeal, the Court**

**HELD:** 1.1 In this matter, essentially pertaining to the operation of rules of procedure in the trial of civil suits, the views as taken by the Trial Court in its order dated 29.11.2021 and the order dated 29.12.2021 as also the view as taken by the High Court in its impugned order dated 14.03.2022 carry their own shortcomings but, appropriate orders are required to be passed for ensuring proper progression of the suits. In none of the referred orders i.e., the orders dated 27.11.2021 and 29.12.2021,

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- A the Trial Court ever adverted to the fundamental aspect as to what were the facts pleaded by the defendants and what was the core of pleadings so as to form a specific opinion as to what pleadings called for rejoinder; if at all rejoinder was to be allowed. On the other hand, fact of the matter remains that the newly added defendants had filed written statements on 27.09.2021. Even if there had been delay in progression of the suit because of variety of factors and even if a part of those factors could be referable to the delay on the part of the plaintiff, that cannot take away the substance of the matter as regards the question as to whether the prayer for filing rejoinder was to be granted or not. [Paras 8, 9][578-G-H; 579-A-D]

- 1.2 The other side of relevant factors is that in terms of the orders passed by this Court commencing from the order dated 08.05.2019, the trial is required to be assigned specific priority. It has been pointed out that by an order dated 05.06.2022, this Court in a batch of matters arising out of the same suits, has ordered that the Trial Court shall be sending specific report as regards progress of the suits and assign them specific priority so as to conclude the trial at the earliest, preferably before 31.03.2023. A cognate feature of the matter is that the Trial Court had framed the issues earlier on 19.08.2005; and before passing of the impugned order by the High Court, the Trial Court had framed seven additional issues on 31.01.2022. In a comprehensive consideration of all the relevant factors and features, this appeal calls for such orders which may be conducive to the purpose of expeditious proceeding rather than protraction because of the procedural aspects relating to the filing of the pleadings. At the same time, balance of the operations of the rules of procedure is also required to be ensured, so as to avoid any likely prejudice to any of the parties. [Paras 10, 11][579-D-G]
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- 1.3 The impugned order dated 14.03.2022 is set aside but the order passed by the Trial Court on 29.12.2021 shall be made applicable with the modification that in the peculiar circumstance of this case, the defendant Nos. 4 to 11 shall be permitted to place on record their further pleadings in the form of sur-rejoinder but only to the extent of new facts, if any, pleaded in the rejoinder
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filed by the plaintiff. In other words, sur-rejoinder shall remain confined to any such fact, if at all, newly pleaded by the plaintiff in the rejoinder. This particular proposition is required to be adopted in this matter, keeping in view several features and factors including two significant factors: one, that under the orders passed by this Court, the trial of the suit is to proceed expeditiously while the matter ought to be assigned a specific priority; and second, that on 31.01.2022, Trial Court had indeed framed additional issues for the trial. [Paras 12, 13][580-B-D]

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1.4 No further issues are required to be framed in this matter and all other aspects of the matter, particularly those relating to pleadings, shall be examined by the Trial Court at the time of final disposal of the suit. The directions already given by this Court that the matter ought to be assigned specific priority so that trial be concluded at the earliest, preferably before 31.03.2023 are reiterated. [Paras 14, 15][580-E]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7181 of 2022.

From the Judgment and Order dated 14.03.2022 of the High Court for the State of Telangana at Hyderabad in CRP No. 204 of 2022.

Ranjit Kumar, I. H. Syed, Sr. Advs., Sarath S. Janardanan, Srinivas Mantha, Abid Ali Beeran P, Advs. for the Appellant.

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A. C. Pradhan, Jayant Bhushan, Sr. Advs., Dhruv Kumar, Ms. Anshu Gupta, Niraj Gupta, Byrapaneni S., B. Venkateswara Rao, Abhijit Basu, Kumar Shashank, Ms. Tatini Basu, Mullapudi Rambabu, N. Eswara Rao, M/s. M. Rambabu and Co., Advs. for the Respondents.

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The Judgment of the Court was delivered by

**DINESH MAHESHWARI, J.**

1. Leave granted.

2. This appeal is directed against the judgment and order dated 14.03.2022 as passed by the High Court for Telangana at Hyderabad in CRP No. 204 of 2022, whereby the High Court has disapproved the order dated 29.12.2021 passed by the Court of Additional Senior Civil

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- A Judge, Ranga Reddy District at L.B. Nagar, allowing the review application under Order XLVII Rule 1 of the Code of Civil Procedure, 1908. While allowing the review application, the Trial Court has taken the subsequent pleadings filed by the plaintiff in the form of rejoinder on record, in supersession of its earlier order dated 29.11.2021, whereby such a permission was declined.
- B 3. The matter essentially relates to filing of pleadings but, various factors and aspects have got entangled because of the long pendency and multifarious incidental proceedings. However, for the present purpose, suffice would be to notice the relevant background aspects and proceedings to the extent relevant to the questions at hand. They are as follows:
  - C 3.1. The plaintiff-appellant has filed O.S. No. 898 of 2001 in the Court of I Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar against the defendant No. 1 – Society seeking cancellation of sale deed dated 15.04.1996 in relation to a parcel of land situated in Survey No. 1007 at Kukatpally Village, Balanagar Mandal, Ranga Reddy District. The appellant has also filed three other suits, being O.S. Nos. 899 to 901 of 2001 for similar reliefs in respect of other parcels of land in the said Survey No. 1007.
  - D 3.2. The issues in the suit were framed on 19.08.2005. Then, the plaintiff was permitted to amend the plaint on 17.01.2006. According to the contesting respondents, the appellant did not carry out amendment for a long time and ultimately the suits were dismissed for non-prosecution on 05.11.2008. Then the suits were restored only in the year 2011.
  - E 3.3. Thereafter, the contesting respondents herein filed I.A. No. 787 of 2018 in O.S. No. 898 of 2001 seeking their impleadment as party defendants. This application was dismissed on 31.12.2018. However, the High Court disapproved the order so passed by the Trial Court and allowed the impleadment of contesting respondents in the order dated 27.03.2019 passed in CRP No. 391 of 2019. The order so passed by the
  - F High Court was sought to be challenged by the appellant in SLP(C) No. 11052 of 2019 in this Court but, the same was dismissed by the Order dated 08.05.2019. In this order, this Court took note of the fact that the Trial Court had been directed to decide the suit within six months; and while reiterating such directions, this Court also made it clear that any other impleadment of individual members in future will not either derail
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or delay the proceeding in the suit. For ready reference, the relevant A contents of the order dated 08.05.2019 could be re-produced as under: -

*"The Special Leave Petition is dismissed since it is from an order impleading individual members.*

*The trial Court has been asked to decide the Suits within a period of 6 months. We make it clear that individual impleadments of members in futuro will not, in any manner, either derail or delay further proceedings in the Suits.*

*We reiterate that the trial Court must decide the Suits within a period of 6 months from today."*

3.4. On 06.06.2019, the Trial Court allowed another application moved by the appellant for amendment of the plaint. According to the contesting respondents, the amended copy of the plaint was filed only on 25.03.2021 by adding them as defendants. It has also been pointed out that on 19.08.2020, this Court again directed the Trial Court to decide the suits within six months in C.P. No. 433 of 2020. On 23.07.2021, the legal representatives of the deceased defendant No. 3 were brought on record as defendant Nos. 9 to 11. On 26.07.2021, the appellant filed the amended plaint by including the newly impleaded parties as defendants. C

3.5. Thereafter, the plaintiff filed I.A. No. 438 of 2021 seeking leave to amend the plaint and on 21.09.2021, the appellant filed amended plaint wherein, according to the contesting respondents, the appellant modified the cause title as also the averments and the prayers. D

3.6. The material aspect of the present matter is that on 27.09.2021, the contesting respondents filed their written statements to the amended plaint. The defendant No. 1- Society also filed additional written statement. It has been the case of the appellant that on 20.10.2021, the defendant No. 2 filed additional written statement raising new grounds. F

3.7. The proceedings leading to the present appeals have their genesis in the applications filed by the appellant being I.A. Nos. 891 of 2021, 892 of 2021 and 893 of 2021 in O.S. No. 898 of 2021 seeking leave to file further pleadings in the form of rejoinder. In regard to this application, the contesting parties have different submissions to make. On one hand, it has been the assertion on behalf of the appellant that with these applications, the proposed rejoinder was also attempted to be filed but the same were returned by the office with a direction that the G

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- A same be filed when the applications are considered by the Court. According to the appellant, all the parties were served with the copies of the applications as also the proposed rejoinder. The contesting respondents filed counter to the application I.A. No. 891 of 2021. The contesting respondents would submit that in such a proposed rejoinder, the plaintiff-appellant attempted to set up an altogether new case, and that too, without filing the rejoinder in the Court.
- B 3.8. On 26.11.2021, the Trial Court heard the arguments on the applications filed by the appellant seeking leave to file rejoinder and the matter was reserved for orders. Then, on 27.11.2021, the appellant purportedly filed the proposed rejoinder in the office of the Trial Court.
- C 3.9. On 29.11.2021, the Trial Court pronounced its order, rejecting the application filed by the appellant essentially on the ground that the proposed rejoinder had not been filed and in the absence thereof, the applications could not be granted. The relevant part of consideration of the Trial Court could be usefully reproduced as under:
- D *“5. ...In the absence of filing of rejoinder along with petition to ascertain whether the said rejoinder confines only to reply to written statement and additional written statement, it may not be proper to allow petition blanket permitting the plaintiff to file rejoinder wherein there is every chance to incorporate a new fact.*
- E *6. The learned counsel appearing on behalf of respondents/defendants are argued that if at all new fact is pleaded by the petitioner/plaintiff through his rejoinder, the defendant would loose his right to place his defence to the said new fact as there is no provision in law to file the rejoinder to rejoinder. In these circumstances and considering the above discussions, these petitions are not maintainable and accordingly, these petitions are dismissed.”*
- F 3.10. Thereafter, on 13.12.2021, the appellant filed review petitions before the Trial Court, *inter alia*, with the submissions that the proposed rejoinder had already been filed before passing of the order by the Court. The review petitions so filed by the appellant, after thorough contest, were allowed by the Trial Court by its order dated 29.12.2021. The Trial Court proceeded to review its order dated 29.11.2021 and allowed the rejoinder already filed by the appellant to be taken on record. The relevant
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part of consideration of the Trial Court, in allowing the review application, A is also reproduced for ready reference as under:-

*"12. ...On reading the provisions together, this court is of the opinion that this case is a fit case to review its order dated 29.11.2021 and permit the petitioner/plaintiff to file the rejoinder which was not placed before this court though filed and is already on record and to allow the same to be on record. The mere filing of rejoinder will not vitiate the rights of the parties and however the parties would lead their evidence and these pleadings would definitely assist the court in deciding the case to its merits. In the circumstances, these petitions are to be allowed. Accordingly, both points are answered.*

*13. In the result, these petitions are allowed by reviewing the order dated 29.11.2021 and setting aside the same also consequently, the rejoinder which is already filed in Court is taken on record."*

3.11. Thereafter, on 31.01.2022, the Trial Court framed seven additional issues and posted the matter for trial. However, on 01.02.2022, the contesting respondents challenged the aforesaid order dated 29.12.2021 by way of revision petition in the High Court. In the meantime, on 10.01.2022, this Court extended the time for conclusion of the trial by another six months.

3.12. In the revision petition so filed by the contesting respondents of this appeal, the High Court disapproved the order passed by the Trial Court in its impugned order dated 14.03.2022 while, *inter alia*, observing as under: -

*"20. Reverting back to the facts of the present case, as discussed above, the plaintiff has filed original suit in the year 2001 against the sole defendant, thereafter the other defendants were impleaded, more particularly after impleading the present revision petitioners, they have filed a detailed written statement for which the plaintiff has requested the Court below for permission to file rejoinder under Order-VIII, Rule-9 of CPC. Initially, that application filed under Order-VIII, Rule-9 CPC in IA No.891 of 2021 was dismissed by the trial Court, through the common order, dated 29.11.2021. Thereafter, the plaintiff has filed an application under Order-47,*

- A Rule-1 CPC to review the said common order. Accordingly, all these review applications are numbered as IA No.1061 of 2021 in IA No.891 of 2021, IA No.1062 of 2021 in IA No.892 of 2021 and IA No.1063 of 2021 in IA No.893 of 2021 in OS No.898 of 2001. All these review applications were allowed and the orders impugned in IA Nos.891, 892 and 893 of 2021 were set aside and they were substituted with a detailed order permitting the plaintiff to file rejoinder with an observation that rejoinder which was already filed is taken on record. In that view of the matter, since under the grab of review the original order is substituted with the impugned order, I am not inclined to accept the submissions of the learned senior counsel for the plaintiff.
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- D 21. Undisputedly, the power of review has its own limitations and the order or judgment may be open to review *inter alia* if there is a mistake or error apparent on the face of the record and permitting the order to stand will lead to failure of justice. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for a patent error. Thus in exercise of power of review, it is not permissible to rehear and correct an erroneous decision.
- E 22. The sum and substance of the aforesaid discussion is that the trial Court has committed grave error in allowing the review petitions by totally substituting the earlier order dated 29.11.2021 with the order impugned dated 29.12.2021 in exercise of powers under Section 114 and Order-47, Rule-1 CPC. Though the learned Judicial Officer has referred to the judgment of Supreme Court in Ram Sahu's case (2<sup>nd</sup> supra), in impugned order at para-12, no attempt was made either to distinguish the same or to follow the authoritative pronouncement made by the Hon'ble Supreme Court on the scope of review petitions. When the facts of the present case are tested on the touch stone of principles laid by the Supreme Court in the above decisions, the answer is in negative, the order impugned suffers from jurisdictional error and infirmities. The learned Judicial Officer is totally misdirected as to the scope of review under Section 114 and Order-47, Rule-1 of CPC in passing the order impugned dated 29.12.2021 and it is not sustainable, liable to be set aside."
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3.13. Assailing the order aforesaid, the appellant filed present petition seeking leave to appeal, being SLP(C) No. 6464 of 2022, wherein on 13.06.2022 this Court, while issuing notices, granted stay over the operation and effect of the impugned order dated 14.03.2022.

4. In another set of incidental proceedings, on 07.02.2022, the appellant filed an application before the Trial Court for receiving 89 additional documents, which was allowed by the Trial Court, against which the contesting respondents filed CRP no. 315 of 2022 and also sought interim suspension. As per the facts stated by the contesting respondents, another application filed by the appellants for receiving additional documents was also allowed by the Trial Court on 22.07.2022, though a certified copy thereof was issued only on 16.09.2022. The said suspension order dated 04.08.2022 is the subject matter of SLP(C) No. 16151 of 2022 which is also placed on board today before us and shall be considered separately.

5. For completion of the background aspects, we may also take note of the facts stated before us that all the four suits aforesaid stand clubbed and the evidence is being recorded in O.S. No. 898 of 2001. These suits have been transferred upon re-organization of Judicial District to the Court of Additional Senior Civil Judge Madchalpajgiri District at Kukutpali and are re-numbered as O.S. Nos. 588, 589, 590 and 591 of 2022.

6. The learned senior counsel for the plaintiff-appellant has submitted that the Trial Court had earlier dismissed the application seeking permission to file rejoinder on a mistaken impression that the proposed rejoinder had not been filed and, therefore, when the fact was brought to the notice of the Court that the proposed rejoinder had, in fact, been filed on 27.11.2021 before pronouncement of the order dated 29.11.2021, the Trial Court appreciated the error apparent on the face of the record and rightly reviewed its earlier order and passed a just order on 29.12.2021. The High Court, according to the learned counsel, has erroneously interfered with the just and proper order passed by the Trial Court while not appreciating that every Court has inherent power to recall the order and to rectify a mistake that prejudices a party. According to the learned counsel, there had not been any jurisdictional error in the matter and there was no reason for the High Court to upset the order of the Trial Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

- A        7. On the other hand, learned counsel for the contesting respondents has made an elaborate reference to the multiple proceedings pertaining to the suits in question and has submitted that the suits filed in the year 2001 are being dragged on by the plaintiff-appellant for no justified reason. The learned counsel, with reference to various proceedings as noticed above, has submitted that with multiple propositions of amendment of the plaint and then filing of the amended plaint at its own leisure with insertion of new averments, the plaintiff-appellant has only been intending to protract this litigation to the prejudice of the contesting respondents. It has also been submitted that in the name of rejoinder, the appellant has attempted to introduce an altogether new case. In this regard, learned counsel would also refer to the fact that as against 11 pages of amended plaint containing facts in 7 pages, the appellant attempted to file a rejoinder running into as many as 38 pages. Learned counsel has also referred to the fact that after passing of the order by the Trial Court, the appellant has also attempted to file as many as 89 additional documents on 07.02.2022 and yet further documents on 26.04.2022.

- E        7.1. With reference to all the aforesaid features and factors, the emphasis of learned counsel for the respondent has been that by not placing proposed rejoinder before the Court at the time of consideration of the applications on 26.11.2021, the plaintiff-appellant attempted to seek an order for taking rejoinder on record without disclosing as to what was sought to be pleaded therein. Such an attempt, according to the learned counsel, was rightly disapproved by the Trial Court. However, the Trial Court got persuaded to allow the review petition only because of filing of the rejoinder in the Court after arguments on the applications
- F        and such an approach has rightly been disapproved by the High Court, particularly when the Trial Court, in its impugned order dated 29.12.2021, did not even indicate as to what were the factual aspects for which further pleadings were sought to be filed.

- G        8. Having given thoughtful consideration to the rival submissions, having minutely examined the material placed on record as also the lists of relevant dates supplied by the learned counsel for the appellant and by the learned counsel for the contesting-respondents, we are clearly of the view that in this matter, essentially pertaining to the operation of rules of procedure in the trial of civil suits, the views as taken by the Trial Court in its order dated 29.11.2021 and the order dated 29.12.2021
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as also the view as taken by the High Court in its impugned order dated 14.03.2022 carry their own shortcomings but, appropriate orders are required to be passed for ensuring proper progression of the suits. A

9. For the view which we propose to take in the matter, not much of discussion appears in requisite. Suffice it to observe for the present purpose that in none of the above referred orders i.e., the orders dated 27.11.2021 and 29.12.2021, the Trial Court ever adverted to the fundamental aspect as to what were the facts pleaded by the defendants and what was the core of pleadings so as to form a specific opinion as to what pleadings called for rejoinder; if at all rejoinder was to be allowed. On the other hand, fact of the matter remains that the newly added defendants had filed written statements on 27.09.2021. Even if there had been delay in progression of the suit because of variety of factors and even if a part of those factors could be referable to the delay on the part of the plaintiff, that cannot take away the substance of the matter as regards the question as to whether the prayer for filing rejoinder was to be granted or not. D

10. The other side of relevant factors before us is that in terms of the orders passed by this Court commencing from the order dated 08.05.2019, the trial is required to be assigned specific priority. It has been pointed out that by an order dated 05.06.2022, this Court in a batch of matters arising out of the same suits, has ordered that the Trial Court shall be sending specific report as regards progress of the suits and assign them specific priority so as to conclude the trial at the earliest, preferably before 31.03.2023. A cognate feature of the matter is that the Trial Court had framed the issues earlier on 19.08.2005; and before passing of the impugned order by the High Court, the Trial Court had framed seven additional issues on 31.01.2022. E F

11. In a comprehensive consideration of all the relevant factors and features, we are clearly of the view that this appeal calls for such orders which may be conducive to the purpose of expeditious proceeding rather than protraction because of the procedural aspects relating to the filing of the pleadings. At the same time, balance of the operations of the rules of procedure is also required to be ensured, so as to avoid any likely prejudice to any of the parties. G

11.1. In this view of the matter, we are inclined to modify the orders impugned so as to allow the rejoinder to remain on record but, at H

- A the same time, to allow the contesting-defendants to place on record their further pleadings in the form of sur-rejoinder, to the extent it may be necessary.

12. Accordingly, this appeal is allowed to the extent and in the manner indicated above. The impugned order dated 14.03.2022 is set

- B aside but the order passed by the Trial Court on 29.12.2021 shall be made applicable with the modification that in the peculiar circumstance of this case, the defendant Nos. 4 to 11 shall be permitted to place on record their further pleadings in the form of sur-rejoinder but only to the extent of new facts, if any, pleaded in the rejoinder filed by the plaintiff.

- C In other words, sur-rejoinder shall remain confined to any such fact, if at all, newly pleaded by the plaintiff in the rejoinder.

13. We also make it clear that this particular proposition is required to be adopted in this matter, keeping in view several features and factors including two significant factors: one, that under the orders passed by

- D this Court, the trial of the suit is to proceed expeditiously while the matter ought to be assigned a specific priority; and second, that on 31.01.2022, Trial Court had indeed framed additional issues for the trial.

14. We make it clear that no further issues are required to be framed in this matter and all other aspects of the matter, particularly those relating to pleadings, shall be examined by the Trial Court at the

- E time of final disposal of the suit.

15. We reiterate the directions already given by this Court that the matter ought to be assigned specific priority so that trial be concluded at the earliest, preferably before 31.03.2023.

16. The appeal stands disposed of accordingly.

Divya Pandey

Appeal disposed of.