

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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C.R.P. NO. 4371 of 2014

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Date of Judgment: 3.3.2015

Between:

Burla Sambaiah

...Petitioner

And

Mallarapu China Venkaiah

..Respondent

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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CRP No. 4371 of 2014

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ORDER:

Heard learned counsel for the parties

The petitioner, who is the defendant in O.S.No. 89 of 2012 on the file of Senior Civil Judge, Chirala, filed I.A.No. 1300 of 2014 praying the trial Court to frame an additional issue as to 'whether the plaintiff's transferor has capacity to lend the amount covered under the suit promissory note?', after the plaintiff's evidence was over and when the suit was coming up for further evidence of defendant.

The said application was contested and dismissed under the impugned order dated 12.11.2014, against which the present revision petition is preferred.

In the suit, an issue has already been framed vide issue No.2 as to whether the suit pronote is true, valid and supported by consideration. Undoubtedly the said issue itself is wide enough to cover the additional issue now sought to be framed. Even otherwise, when the petitioner/defendant pleads that the plaintiff's transferor had no capacity to lend money, it is for the petitioner/defendant to lead evidence in support of the said plea. Order 14, Rule 5 of Civil Procedure Code prescribes that the Court may at anytime before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed and the Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced. Therefore, it is purely discretion of the Court to frame additional issue at any point of time even at the time of finally disposing of the suit if it feels necessary. At the present moment as is evident from the impugned order, the trial Court was of the view that an issue has already been framed which is a

comprehensive issue and it held that there was no necessity to frame additional issue. Hence in the facts and circumstances of the case, I do not see any reason to interfere with the impugned order. However, the trial Court is at liberty to consider and frame additional issue at any stage of the suit including at the time of passing of judgment if it is in its opinion that such additional issue is also necessary to be framed. The trial Court shall now proceed with the trial at which it was held up and dispose of the suit expeditiously.

For the reasons given hereinabove, the revision petition is dismissed along with miscellaneous applications, if any. No order as to costs.

VILAS V. AFZULPURKAR, J

Dt. 3.3.2015

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