

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**C.R.P.No.2109 of 2014**

**ORDER:**

Heard Sri S.Balchand, learned counsel for the petitioner and Sri P.Venkanna, learned counsel for the respondent.

2. This Revision Petition is filed challenging the order dt.21-04-2014 in I.A.No.297 of 2014 in O.S.No.206 of 2013 of the III Additional Chief Judge, City Civil Court, Hyderabad, granting unconditional leave to defend to the respondent in the said suit which was filed under Order 37 CPC.
3. The petitioner had filed the suit against the respondent on the basis of a promissory note dt.18-09-2011. On 03-10-2013, I.A.No.297 of 2014 had been filed by the respondent seeking leave to defend raising certain contentions as to why he is entitled to leave to defend.
4. Counter affidavit was filed to the said application by the petitioner opposing grant of leave to defend, raising certain contentions.
5. By order dt.21-04-2014, the Court below granted unconditional leave to defend to the respondent.
6. Challenging the same, this Revision Petition is filed.
7. A reading of the impugned order nowhere indicates that the Court below had applied its mind to the nature of the defence set up by the respondent in the application seeking leave to defend. Under the proviso to Order 37 Rule 3 (5) CPC, leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a

substantial defence to raise or that the defence intended to be put up by him is frivolous or vexatious.

8. Instead of considering the matter from this perspective, the Court below simply stated that on the basis of the defence mentioned in the application for leave to defend, it is a fit case to grant leave to defend. It also referred to certain procedural steps which had been taken in the suit and discussed about those procedural steps more instead of the grounds on which leave to defend was sought by the respondent.
9. Although the learned counsel for the respondent sought to contend that there is consideration of the defences raised by the respondent in the impugned order, I am unable to agree with the said submission.
10. In this view of the matter, the order dt.21-04-2014 in I.A.No.297 of 2014 in O.S.No.206 of 2013 of the III Additional Chief Judge, City Civil Court, Hyderabad is set aside and the said I.A. is remitted back to the said Court to consider afresh the question whether the respondent is entitled to leave to defend at all or entitled to leave to defend conditionally or unconditionally and to then pass a reasoned order in accordance with law after hearing both sides.
11. The Civil Revision Petition is allowed with the above directions. No costs.
12. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 07-10-2015

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