

**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

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**CIVIL REVISION PETITION No.4022 of 2015**  
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**ORDER:**

Respondents 1 and 2 herein filed O.S. No.112/2014 on the file of the Court of the learned Principal Junior Civil Judge, Chirala, Prakasam District, for permanent injunction against the respondents 3 and 4 and the petitioner herein. Defendant No.1 filed written statement and the same was adopted by defendants 2 and 3. After filing the written statement, I.A. No.457/2015 was filed by the defendants seeking amendment of written statement by adding the following paragraph to paragraph No.13 at Page 5 of the written statement:

“This defendant submits that the plaintiffs suppressed the factum of receiving the ex-gratia amount of Rs.12,76,000/- and Rs.7,68,000/- respectively from M/s. Vanpic Projects Pvt. Ltd. and execution of delivery of possession agreements dated 15-05-2010, receipts acknowledging the aforesaid payments and handed over the original documents of Pass Books and Title Deed and other documents to the M/s. Vanpic Projects Pvt. Ltd. The plaint schedule property belongs to M/s. Vanpic Projects Pvt. Ltd. and the said property is in peaceful possession and enjoyment of the plaint schedule property. The original documents are in the custody of M/s. Vanpic Projects Pvt. Ltd. The defendant submits the M/s. Vanpic Projects Pvt. Ltd. is the necessary party in the above suit proceedings. The plaintiffs not added the M/s. Vanpic Projects Pvt. Ltd. as a defendant in the above suit. The defendant submits that non-joinder of necessary party in the above suit is not maintainable and liable to be dismissed.”

A detailed counter affidavit was filed by the respondents 1 and 2 disputing the averments made in the application for amendment of written statement. The trial Court, by its order dated 10.08.2015, dismissed the application by going into the merits of the case, which

ought not to have been done. The lower Court ultimately observed as follows:

“The contentious issues in the present case are whether respondents/plaintiffs are in possession over schedule property as on the date of filing of present suit and whether petitioners/defendants are interfering with such alleged possession. If, petitioners/defendants adduced any cogent evidence regarding possession of M/s. Vanpic Projects Pvt. Ltd., during course of trial, it would disentitle respondents/plaintiffs to get relief of injunction. Hence, I am of the view that impleading of written statement pleadings as sought by petitioners/defendants is not at all just and relevant. Admittedly I.A.1092/2014 stand posted for arguments of petitioners/defendants at that juncture, petitioners/defendants filed present petition to stall in I.A.1092/2014. Hence, I am of the considered view that this petition is filed only to dodge and procrastinate the proceedings. This petition is devoid of merits. Hence, this petition is liable to be dismissed.”

The lower Court has observed the fact of pendency of an application for temporary injunction in I.A.No.1092/2014, filed by respondents 1 and 2 herein. The consideration of said application is based on the averments made in the plaint, filed by the respondents 1 and 2 herein, and the said application has to be considered on the basis of the *prima facie* findings. Since the defendants have to lay foundation for their case, they wanted to amend the written statement, immediately after the filing of original written statement, which ought not to have been prevented by the trial Court. Admittedly, in the suit, the issues have not been framed and no prejudice is caused to the plaintiffs by virtue of allowing the present application, filed by the defendants.

In the above circumstances, the impugned order in I.A.No.457/2015 dated 10.08.2015 is set aside, and the same is allowed. However, the lower Court shall frame the appropriate issue, on the basis of averments made in the plaint and denied in the written

statement, without being influenced by any observations made in the impugned order dated 10.08.2015 or in this order.

As the learned counsel for both sides agreed for disposal of the main suit itself as expeditiously as possible, the lower Court shall be done so on or before 30.09.2016.

Accordingly, this Civil Revision Petition is allowed. No order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

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**A.RAMALINGESWARA RAO, J**

09.12.2015

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