

HON'BLE SRI JUSTICE R.KANTHA RAO

Civil Revision Petition No.2855 of 2015

Order:

Heard Sri M.A.V.S. Bhagavan, learned counsel appearing for the petitioner and Sri Ch.Samson Babu, learned counsel appearing for the respondents.

2. The respondents are the plaintiffs in O.S.No.26 of 2008 on the file of the Court of VI Additional District Judge, Kakinada, East Godavari district. The 1st respondent-Nehru Educational Society is the 1st plaintiff. The 1st plaintiff-Society took the premises of the defendant on lease in the year 1977 for the purpose of running a school on monthly rent of Rs.200/- from the petitioner-defendant. According to the respondents-plaintiffs, the premises was in a dilapidated condition and with the permission of the petitioner, the respondents made some constructions for the purpose of running the school in the premises.

In the meanwhile, it seems that there arose a dispute between the petitioner and a 3rd party who filed a suit against the petitioner for specific performance of an agreement to sell. The petitioner resisted the same and the matter went up to the Supreme Court and ultimately, the petitioner succeeded in the suit. Subsequently, there was a litigation between the plaintiffs and the defendant regarding vacating the schedule premises in which the respondents were running a school. The said litigation went up to the

High Court and ultimately, the petitioner succeeded in the suit and the respondents were directed to vacate the schedule premises.

3. The version of the respondents is that while the litigation was going on between the 1st respondent-Society and the petitioner, the petitioner promised the respondents that in the event of the Society vacating the premises under the Court order, he would reimburse the amount incurred by the respondents for the purpose of making constructions in the schedule premises. Subsequently, according to the respondents, the petitioner refused to pay the amount of Rs.5,50,000/- which the respondents incurred for making constructions in the schedule premises. Therefore, the respondents filed the suit against the petitioner for recovery of an amount of Rs.13.2 lakhs towards costs of the constructions. In the said suit, trial commenced, the entire evidence was completed and arguments were heard and the matter was posted for judgment. At that stage, the petitioner filed an application under Order VIII, Rule 9 read with Section 151 C.P.C seeking the leave of the Court to receive the additional written statement. In the additional written statement, it is pleaded by the petitioner-defendant that at the time of vacating the premises, the respondents-plaintiffs removed the thatched sheds, took away cement poles, bricks and other material and thereby the petitioner sustained loss of Rs.1,47,600/-.

4. The petition was opposed by the respondents-plaintiffs and the Trial Court after hearing both sides dismissed the petition on the ground that the said plea was not taken in the plaint and the Affidavits filed in lieu of chief-examination of P.Ws.1 to 3, the said fact has not been mentioned and in the cross-examination of P.Ws.1 and 2 which was conducted subsequent to 01-5-2010, the petitioner did not put any questions to the witnesses about taking away the structures and other material by the respondents-plaintiffs and the consequential loss sustained by the defendant. On all these grounds, the learned Trial Court dismissed the petition filed by the petitioner-defendant to receive the additional written statement.

5. Before arriving at a decision on the issue involved in the present revision, it is necessary to look into Order VIII, Rule 9 C.P.C., which is as under:

“9. Subsequent pleadings :-- No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.”

6. By virtue of the said provision, no additional written statement which is not in the nature of set-off or counter claim may be allowed by the Court. In the instant case, there is no plea of counter claim in the written statement that was taken by the petitioner-defendant. Further, the petition was

filed when the matter was reserved for judgment by the Trial Court. The contentions put forth by the petitioner in the written statement were not part of the record even though the entire trial of the case was completed and arguments were heard and the matter was posted for judgment. Therefore, seeking leave of the Court for filing additional written statement when the matter was reserved for judgment till the aforesaid facts and circumstances of the case is nothing but an abuse of process of law.

7. The learned Trial Court, therefore, rightly dismissed the application seeking leave for filing additional written statement. The order dated 19-01-2015 in I.A.No.581 of 2014 in O.S.No.26 of 2008 passed by the learned Trial Court does not call for any interference in the present revision. The civil revision petition is, therefore, dismissed. The miscellaneous petitions, if any, pending in this revision shall stand closed. No costs.

R.KANTHA RAO, J.

21st August, 2015.

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