

HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.R.P.No.395 of 2015

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ORDER:

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This revision is preferred against docket order dated 14.11.2014 passed in I.A.No.326 of 2014 in O.S.No.34 of 2013 on the file of VI Additional District Judge, Medak District at Siddipet, whereunder the trial Court passed an order to call the petition filed under Order 7 Rule 11(a) CPC for rejection of the plaint along with the main suit which to be decided in the trial. Aggrieved by that order, defendant No.8 who filed that application preferred the present revision.

Heard both sides.

Advocate for revision petitioner submitted that when an objection is raised that there is no cause of action for filing the suit against the petitioner, without deciding that application, ordering to call that application along with the suit to be decided during trial is not correct and to support his argument, he placed reliance on **Saleem Bhai and others v State of Maharashtra and others** whereunder Hon'ble Supreme Court observed as follows:

“A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial Court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit—before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial Court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not

advert to these aspects”.

Considering the judgment of Supreme Court referred to above and perusing the order of the learned trial Judge, which is not a speaking order, I feel that it is a fit case to set aside the docket order dated 14.11.2014 passed in I.A.No.326 of 2014 in O.S.No.34 of 2013 on the file of VI Additional District Judge, Medak District at Siddipet, by remitting back the matter to the Court below to decide the application filed under Order 7 Rule 11(a) CPC on merits within one month from the date of receipt of a copy of order.

Revision Petition is ordered accordingly. No costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

JUSTICE S.RAVI KUMAR

Dt.6th April, 2015.

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