

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.5509 OF 2015

ORDER:

The Civil Revision Petition is filed against the order dated 07.09.2015 passed in I.A. No.441 of 2015 in O.P. No.113 of 2011 by the Senior Civil Judge at Yellamanchili, Visakhapatnam.

2) Heard learned counsel for the revision petitioner and learned counsel for the respondent. Perused the material on record.

3) It is, in fact before going through the order, necessary to pursue the so-called certificate/ letter dated 11.08.2010 that was placed reliance for passing the impugned order by the lower Court. The impugned order at para Nos.4 to 6 are read as follows:

“4. As per the Para No.5 of the plaint, it appears that the plaintiff has clearly mentioned that court fee and process fee was not paid as the reason the Honourable Lok Adalat provided the legal aid to the plaintiff/ respondent by the Hon'ble District Judge-cum-Chairman, District Legal Services Authority with the Reference letter in Dis.No.115 dt.11.08.2010 of the Chairman, MLSC, Yellamanchili as such the said order i.e., Dis.No.804 dt.30.08.2010 to file a suit and to prosecute the matter for the proposed plaintiff by initiating necessary action on behalf of the plaintiff and against the defendant for his illegal acts in respect of the suit schedule property and its damages etc., causing loss to the plaintiff and the legal rights and obligations etc to the plaintiff.

5. As per the above mentioned averments made in the plaint itself clear enough to say that the plaintiff was exempted to pay the court fee on the date of filing of the suit by the Hon'ble District cum Chairman, District Legal Services Authority, Visakhapatnam basing on a letter addressed by MLSC, Yellmanchili. In such a case, the question of filing of an additional written statement by the petitioner by taking such a plea that the plaintiff has not

paid the court fee of Rs.12,226/- so that the suit is not maintainable and the plaint has to be rejected appears as not permissible, hence I am not inclined to allow this petition.

6. Accordingly, this petition is hereby dismissed. In the circumstances, both the parties are directed to bear their own costs.”

4) The letter of the District Legal Services Authority dated 30.08.2010 speaks that legal aid granted to the plaintiff by name Lalam Atchibabu through Y.Latchanna, advocate of Yelamanchili, MLSC is ratified. There is nothing in the said memorandum/ certificate/ letter of any legal aid for court fee or exempting court fee under the provisions of the Act. It is, in fact, the same is sought to be filed by raising as an additional ground of defence in the additional written statement sought to be filed. In fact the proper remedy to file the application is invoking Order VII Rule 11 read with Section 151 of C.P.C for rejection of the plaint, for non-payment of court fee, for the reason that said letter or certificate is silent regarding the payment of court fee, but for legal aid only granted by appointing advocate as legal aid counsel. Mere wrong quoting of a provision is not fatal to consider the application to grant relief or pass order as per correct provision from the contents to invoke, from the inherent power which inheres from very constitution of every Court to prevent abuse of process of law or to subserve the ends of justice. Even the plaint was numbered without payment of court fee and even without an application for grant of time to pay court fee invoking Section 149 C.P.C. When above facts brought to its notice, the Court is bound to return the plaint to pay the court fee within a reasonable time to be filed or else to produce certificate of exemption and file an application for

the period meanwhile and for non-compliance that could result in rejection of the plaint. Mere numbering of a suit without payment of court fee that no way takes away the power of the Court, atleast to return and ultimately to reject, if court fee is not paid, for power of return or rejection is available till pronouncement of judgment, right from filing of the claim.

5) Thus, the trial Court should not have dismissed the application covered by the impugned order so casually, much less to read something not in the said letter or proceeding so far as the court fee concerned, the Court fee to be payable or the suit to be filed in the *farma-pauparis* under Order XXXIII C.P.C or a certificate exempting payment of the court fee is to be obtained under the Legal Services Authorities Act and to be produced to exempt payment of court fee or else payable.

6) The trial Court even wrongly numbered the suit and when said factum is brought to the notice, by virtue of the impugned order covered petition, the Court should have been even closed the petition, by taken *suemoto* cognizance of the factum and could have been returned the plaint to comply as above. Thereby the impugned order dismissing the application since unsustainable, the same is set-aside and remitted back to the lower Court to dispose of the application filed under Order VIII Rule 9 C.P.C with correct provision, atleast to take cognizance from the facts mentioned therein and by virtue of this order return the plaint and direct the plaintiff within time being fixed to obtain meanwhile any certificate from the Legal Services Authority, if at all he wants to be exempted for payment of court fee and in case of any non-compliance, to reject the plaint.

5) Accordingly and in the result, the revision is allowed and the matter is remanded to the lower Court for fresh disposal pursuant to the directions supra and according to law. No order as to costs.

Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.27.09.2016
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