

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

C.R.P.No.1976 of 2016

ORDER :

This Civil Revision Petition is filed challenging the order dt.09.12.2015 in I.A.No.795 of 2015 in O.S.No.297 of 2012 of the Senior Civil Judge, Tanuku.

2. Petitioner herein is the defendant in the above suit. The said suit was filed by the respondent for recovery of money from the petitioner on the basis of a promissory note.

3. Written statement was filed by the petitioner denying the execution of promissory note on 08.11.2013.

4. Thereafter both parties lead evidence. Arguments were heard and matter was posted for judgment on 27.11.2015.

5. On that day, petitioner had filed I.A.No.795 of 2015 under Order VIII Rule 9 CPC seeking to amend the written statement by adding para 2(a) after para (2) in the written statement. In the said para, petitioner wanted to state that he was not in Kakileru at the time of alleged execution of Ex.A1 promissory note, that he came from Doha to Hyderabad and he was at airport at Hyderabad at relevant point of time and there was no possibility of execution of Ex.A1 promissory note.

6. In the affidavit filed in support of this application it was stated that in the written statement the petitioner had denied the execution, attestation, etc., of Ex.A1; that he had filed Ex.B1 to B3 to show that he was not in India at that time and he was in the aircraft; that the matter was coming up for arguments; it was noticed that no specific plea had been taken in the written statement about the time of execution of Ex.A1; that there was no plea that it was not possible for the petitioner to execute Ex.A1 promissory note; and so he was advised to file

additional pleading by way of amendment of written statement to protect his interest. It was also contended that this plea will not change the nature of the pleadings and it is only an additional pleading.

7. Counter affidavit was filed by the respondent opposing this application and pointing out that petitioner did not take any stand in the written statement that on the day of execution of Ex.A1 promissory note, he was not in India and that he was in aircraft. It was also stated that the petitioner had filed written statement three years back, issues were framed, trial commenced, evidence of both sides was closed and the matter was posted for arguments and at such a stage, this application is filed. It was pointed that Order VIII Rule 9 CPC mandates that the party seeking to file additional pleading should seek leave of the Court but the petitioner had not sought leave of the Court. It was further contended that petitioner actually intends to amend the written statement and for that he should have invoked Order VI Rule 17 CPC, but to get over the restriction introduced in the proviso to Order VI Rule 17 CPC by the amendment of the Civil Procedure Code introduced by the Code of Civil Procedure code (Amendment Act 22 of 2002) (that application for amendment should not be allowed after the trial is commenced unless the Court comes to conclusion that in spite of due diligence the party could not have raised the matter before commencement of trial), the petitioner has invoked Order VIII Rule 9 CPC. It was also stated that petitioner had not indicated that in spite of due diligence he could not raise the matter earlier and that if the proposed plea is allowed, it would cause serious prejudice to the respondent/plaintiff.

8. By order dt.09.12.2015, the Court below dismissed the said application. It observed that the petitioner did not seek permission to file additional written statement and he also did not seek to amend the written statement invoking Order VI Rule 17 CPC and merely sought

addition of a para in the written statement as an additional pleading by way of an amendment. It observed that in the original written statement the plea that the petitioner had reached Hyderabad from Doha and he was at aircraft at Hyderabad at the relevant point of time, was not mentioned and this lacuna in the original written statement was sought to be filled up by raising additional pleading now. It observed that the petitioner is trying to make his pleading conform to the evidence on record instead of the reverse. It held that he had an opportunity to file the detailed written statement including the plea of alibi but he did not do so.

9. Challenging the same, this Civil Revision Petition is filed.

10. Though counsel for the petitioner contended that the new plea sought to be raised by the petitioner is not inconsistent with the original plea and it does not cause any prejudice to the respondent, I am of the view that the said contention cannot be accepted. Admittedly, the application in substance seeks amendment of the written statement. Therefore, Order VIII Rule 9 CPC would not apply and Order VI Rule 17 CPC ought to have been invoked by the petitioner. The proviso to Order VI Rule 17 CPC states that no application for amendment shall be allowed after the trial commenced unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before commencement of trial. No material is placed by the petitioner that he had exercised due diligence and that he could not have raised the matter before commencement of trial. Obviously, to circumvent the proviso to Order VI Rule 17 CPC, the petitioner had invoked Order VIII Rule 9 CPC, which is inapplicable.

11. In view of the above legal position, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

12. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

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

M.S.RAMACHANDRA RAO, J

03rd June, 2016.

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