

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.3531 OF 2016

ORDER:

Defendant in O.S.No.87 of 2007 on the file of the Court of the Senior Civil Judge, Penukonda, Anantapur District, is the petitioner in the present Revision filed under Article 227 of the Constitution of India.

2. Heard Sri P.Lakshmana Rao, learned counsel, appearing for the petitioner and Sri A.Hanumantha Reddy, learned counsel, appearing for the respondent.

3. Respondent herein instituted the above said suit for recovery of amount on the foot of a promissory note. Defendant/petitioner herein filed a written statement in the month of June 2014. After conclusion of the plaintiff side evidence and when the matter was coming up for evidence on behalf of the defendant, the defendant/petitioner herein filed I.A.No.709 of 2015 under the provisions of Order 26 Rule 4 r/w Section 151 of C.P.C., praying for appointment of an Advocate Commissioner to examine Dr.B.R.Galguli, M.D., DPM, DNB., Professor, Department of Psychiatry, St.John's Medical College Hospital, Bangalore and Manager of Sri Balaji Niwas Lodge, Salem.

4. Resisting the said application, the respondent herein/plaintiff filed a counter. The learned Senior Civil Judge, Penukonda, dismissed the said application by way of an order dated 28.06.2016. The said order is under challenge in the present Revision.

5. It is contended by the learned counsel for the petitioner that the questioned order is erroneous, contrary to law and opposed to the very spirit and object of the provisions of Order 26 Rule 4 of the C.P.C. It is further submitted that the Court below went wrong in dismissing the application without assigning any valid reasons.

6. On the contrary, it is argued by the learned counsel for the respondent that there is no error nor there exists any infirmity in the impugned order and in the absence of the same, the order impugned is not amenable for any correction by this Court under Article 227 of the Constitution of India.

7. A perusal of the order impugned clearly shows that the learned judge dismissed the application on the ground that there is no foundation laid by the petitioner in the written statement. A copy of the written statement is also filed before this Court and the same clearly shows that the petitioner herein did not plead anything with regard to undergoing treatment at Bangalore from 07.01.2005 to 10.01.2005 by staying at Salem on 09.01.2005 and 10.01.2005. The submission of the learned counsel that the petitioner herein also filed an application for amendment of written statement cannot be countenanced for the reason that the said application was obviously filed on 11.07.2016 i.e., after disposal of the present application.

8. It is a settled and well established proposition of law that any amount of evidence without there being any pleading is of no consequence. In the instant case, the petitioner herein did not lay any foundation for the same. It is also a settled proposition of law

that unless the order impugned suffers from patent perversity, the jurisdiction of this Court under Article 227 of the Constitution of India is not available.

9. For the aforesaid reasons, Civil Revision Petition is dismissed. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

30.09.2016
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