

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3418 of 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed by the Revision Petitioners challenging the Order in I.A.No.348 of 2016 in I.A.No.53 of 2016 in R.A.SR.No.5674 of 2015 on the file of Chief Judge, City Small Causes Court, Hyderabad, whereby the petition under Order 6 Rule 17 of CPC was allowed to amend the affidavit filed along with the Petition under Section 5 of Limitation Act.

2. The only contention urged before this Court is that the affidavit is not a pleading within the meaning of Order 6 Rule 1 of CPC and thereby the question of amending the same by exercising power under Order 6 Rule 17 of CPC does not arise.

3. Learned counsel for revision petitioners reiterated the same since the trial Court did not consider this objection and prayed to set aside the Order.

4. Whereas, learned counsel for the respondent, while supporting the Order passed by the trial Court, sought leave of the Court to file a fresh affidavit if the Court finds that it is not a pleading.

5. The pleading is defined under Order 6 Rule 1 of CPC, which includes Plaint and Written Statement. But, the affidavit filed along with the Petition under Section 5 of Limitation Act is not a pleading strictly speaking and in such case, the power under Order 6 Rule 17 of CPC cannot be exercised to amend such affidavit annexed to the Petition filed under Section 5 of Limitation Act. At best, the

remedy open to the respondent/petitioner before the trial Court is to file additional affidavit clarifying the mistakes. Therefore, the trial Court did not consider this specific objection raised by the revision petitioners/respondents before it, passed an order erroneously treating the affidavit as pleading. Hence, the Order passed by the trial Court is set aside and consequently, this Civil Revision Petition is liable to be allowed.

6. In the result, this Civil Revision Petition is allowed setting aside the Order in I.A.No.348 of 2016 in I.A.No.53 of 2016 in R.A.SR.No.5674 of 2015 on the file of Chief Judge, City Small Causes Court, Hyderabad, while granting liberty to the respondent herein/petitioner before the trial Court, to file fresh affidavit or additional affidavit clarifying the mistakes, if so advised.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 27-08-2016

eha

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

-

C.R.P. No.3418 of 2016

-

Dt. 27-08-2016

eha.