

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.3568 of 2015

ORDER:

The petitioner herein is the proposed 14th defendant in O.S. No.463 of 2010 on the file of the learned XI Additional District Judge (F.T.C) Rangareddy District. Respondent No.1 herein filed the said suit seeking recovery of money against defendants 1 to 13. In the pending suit, she earlier filed I.A.No.200 of 2011 seeking impleadment of the present petitioner as defendant No.14. That application was dismissed on 07.04.2014, challenging which she filed C.R.P. No.2367 of 2014. That C.R.P. was disposed of with the following observations:

“The only ground on which respondent No.14 is proposed to be impleaded is that respondent No.1 has denied receipt of 21 loads of cement. In my opinion, mere impleadment of respondent No.14 without claiming appropriate relief against it will not serve any purpose for the petitioner. If the petitioner wants to establish her claim that she has transported 21 loads of cement and delivered the same to respondent No.1, she has two options, namely; 1) to examine the representative of respondent No.14 as a witness or 2) to seek amendment of the plaint by seeking relief against respondent No.14- proposed defendant No.14 also jointly and severally along with other defendants and along with it, to file an application for impleadment of respondent No.14.”

Later on, the plaintiff filed I.A. No.793 of 2014 seeking the same relief and also for amendment of the plaint. The petitioner herein filed a detailed counter running into five pages to the affidavit of petitioner and stated that no relief was sought against the petitioner herein and hence, it is not a necessary party to the suit. The lower Court after noting the steps leading to file the present application allowed the application with the following observations:

“Though technically order passed in IA 200/2011 was not set aside by the High Court that petition was dismissed on the ground that no relief was sought against R14. As such there is a difference between the prayer in the earlier petition and the present petition. So question of application of resjudicata does not apply. So far as the limitation aspect raised by R14 is concerned it is open to R14 to take that plea in the written statement to be filed on its behalf. Just because this petition is allowed the aspect of limitation is not decided and it can be raised in the suit and it can be decided. As such I did not find any tenable objection to allow the petition. Hence the point is filed in the affirmative.

In the result petition is allowed no costs.”

Challenging the same, the proposed 14th defendant filed the present C.R.P.

This Court notices that the application in I.A. No.793 of 2014 contains two prayers; one is with regard to impleadment of 14th defendant and the other for amendment of the plaint. The above order of the lower Court does not contain any reason. Even though this Court disposed of C.R.P. No.2367 of 2014 with certain observations, it did not disturb the order dated 07.04.2014 passed in I.A. No.200/2011. The effect of that order should be considered by the lower Court in the application, filed by respondent No.1 herein.

In the circumstances, this Court is not in agreement with the order passed by the lower Court in I.A.No.793 of 2014, dated 03.07.2015, allowing the application, and the order is accordingly set aside remanding the matter to the learned XI Additional District Judge (F.T.C) Rangareddy District, for consideration of the same afresh in accordance with law.

Accordingly, this Civil Revision Petition is allowed. No order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

12.02.2016
MVA

A.RAMALINGESWARA RAO, J