

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.1913 of 2016

ORDER:

This Civil Revision Petition is filed by the petitioner/plaintiff assailing the order dt:21.03.2016 in G.R.No.3655 of 2016 passed by the Principal Senior Civil Judge, Srikakulam directing the petitioner to file certain documents for numbering the suit.

2) The petitioner filed unnumbered suit O.S.No...../2016 against defendants with the averments that himself and one Annepu Phalguna Rao were working as Linemen in Pedda Lankam village in Burja Section under Divisional Electrical Engineer, APEPDCL(Operation), Srikakulam and said Phalguna Rao approached the plaintiff on 15.05.2015 and requested him to stand as surety for personal loan proposed to be obtained by him from Canara Bank, Srikakulam/3rd defendant. Since the said Phalguna Rao was his colleague, the plaintiff stood as Guarantor and signed on the collateral surety agreement for an amount of Rs.3,20,000/-. While-so, said Phalguna Rao expired on 19.06.2015 leaving behind his wife and mother/defendants 1 and 2 as his LRs. When the plaintiff approached them to discharge the loan, they refused and ultimately 3rd defendant gave legal notice to the plaintiff and the deceased—Phalguna Rao calling upon them to discharge the loan amount of Rs.3,42,938/-. The grievance of the plaintiff is that on receiving the notice, he again approached the defendants 1 and 2 and requested them to discharge the loan borrowed by A. Phalguna Rao but they refused, despite the fact that they received terminal benefits of the deceased. Hence, the plaintiff filed the suit for a direction to the defendants 1 and 2 to discharge the loan amount to 3rd defendant from out of the estate of the deceased—A. Phalguna Rao in the hands of

defendants 1 and 2.

3) It appears along with the plaint he filed the notice dt:03.03.2016 issued by the Standing Counsel for the Bank/3rd defendant to deceased —A.Phalguna Rao and plaintiff calling upon them to discharge the loan amount. He also filed the reply notice dt:09.03.2016 got issued by the plaintiff to 3rd defendant and Xerox copy of the petition dt:02.02.2016 submitted by him to the Divisional Electrical Engineer, APEPDCL, Srikakulam.

4) While-so the trial Court in its impugned order dt:21.03.2016 directed the plaintiff to produce the following documents:

- (i) Proof of document if any to be filed that the defendants are legal heirs of the deceased Principal Borrower.*
- (ii) All copies of document to be filed along with proof of duplicate plaint with attestation.*
- (iii) The deceased Borrower is an Employee in the Electricity Department, proof to be filed.*
- (iv) Death Certificate of the deceased to be filed.*

The plaintiff represented the matter on 22.03.2016. The substance of his representation is that he would produce the necessary documents in due course and defendants 1 and 2 made a representation to DAF Srikakulam i.e, Garnishee claiming the compensation amount of deceased and the plaintiff also gave a representation to the Garnishee and hence the suit may be numbered. However, the plaint was returned with the endorsement that the objections dt:21.03.2016 were not complied with. Again on 24.03.2016, the plaintiff represented the matter submitting that there is urgency in the matter as defendants 1 and 2 are making their hectic efforts to take away the compensation amount of the deceased. In spite of the said

representation, the plaint was returned on the ground that objections dt:21.03.2016 were not complied with. It appears on 28.03.2016, the plaintiff again resubmitted the plaint with similar request but the Court has not numbered the suit. Hence the plaintiff filed the instant CRP challenging the initial order dt:21.03.2016 compelling the plaintiff to produce the documents for numbering the suit.

5) Since the suit was returned at the stage of numbering itself, no notice is ordered to respondents/defendants by this Court.

6) Heard arguments of Sri Tarlada Rajasekhar Rao, learned counsel for petitioner. His submission is that the notice dt:03.03.2016 issued by the Standing Counsel for 3rd defendant would show that Phalguna Rao borrowed Rs.3,20,000/- from 3rd defendant bank and the plaintiff stood as guarantor and said Phalguna Rao failed to pay the amount and therefore, the bank demanded both of them to discharge the debt and in view of the said notice, part of the cause of action i.e, non-discharge of bank loan is established and therefore, the trial Court having regard to the urgency involved in the matter ought to have numbered the suit instead of returning the suit on the ground that the plaintiff has not filed the documents mentioned in its order dt:21.03.2016.

7) I find force in the above submission. The notice dt:03.03.2016 clearly shows that the Phalguna Rao took loan for which plaintiff stood as guarantor. Ofcourse the factum of death of Phalguna Rao is not forthcoming from the said notice as the said notice was issued treating Phalguna Rao as still alive. Be that it may, from the facts narrated in the plaint, it appears the factum of death of Phalguna Rao and defendants 1 and 2 being his LRs is not in dispute. Any how, in view of the urgency involved in the matter, the trial Court in my considered

view ought to have numbered the suit at first by giving reasonable time to plaintiff to produce the relevant documents at a later stage.

8) In the result, this Civil Revision Petition is allowed and the plaintiff is directed to represent the suit within Ten (10) days from the date of this order and upon such representation, the trial Court shall register the suit forthwith by giving Two (2) months time to the plaintiff from the date of registration of the suit to produce the documents mentioned in its order dt:21.03.2016. No order as to costs.

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

U. DURGA PRASAD RAO, J

Date: 18.04.2016
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