

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

CIVIL REVISION PETITION No.4856 OF 2016

ORDER:

This Civil Revision Petition is arising out of the order dated 27.07.2016 in O.S.No.8 of 2016 on the file of the Court of Senior Civil Judge, Vizianagaram (for short, trial Court).

2. Heard Sri G.Rama Gopal, learned counsel for the petitioner and Sri Rama Chandra Murthy, learned counsel for respondent No.1.

3. Learned counsel for the petitioner submits that the petitioner is being aggrieved by the order passed by the trial Court in rejecting his plaint under Order VII Rule 11 (b) of CPC for non-payment of sufficient Court fee.

4. In this regard, the trial Court has passed the following order:

“15. In the result, this Court, by entertaining the objection of the learned counsel for the defendants and by holding that the paid court fee for the suit claims is inadequate, directs the plaintiff for payment of court fee of the suit claims as mandated in the present order before 5.00 PM on 01.08.2016.

16. It is needless to make a mention that if the plaintiff pays the court fee as directed in the present order, the Office shall place the plaint before the Presiding Officer for fresh scrutiny and in the event of non-compliance of the present order by the plaintiff, the suit stands rejected under Order VII Rule 11(b) CPC.”

5. Learned counsel for the petitioner submits that the petitioner has produced seven market value certificates before

the trial Court, but they were not taken into consideration as the authority, who issued those certificates, was not examined. He further submits that if the petitioner is given an opportunity, he will call the concerned authority and prove his certificates before the trial Court and pay the correct Court fee.

6. Learned counsel for respondent No.1 submits that this civil revision petition is not maintainable, in view of the amended provision under Section 115 of CPC. The amended Section 115 of CPC reads as follows:

“115. Revision:- 1. The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears:-

- a) to have exercised a jurisdiction not vested in it by law, or
- b) to have failed to exercise a jurisdiction so vested, or
- c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

2. The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

3. A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

Explanation: In this section, the expression “any case which has been decided” includes any order made, or

any order deciding an issue, in the course of a suit or other proceeding.”

Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

7. Learned counsel for respondent No.1, placing reliance on a decision of this Court in **Kona Ramu v. The Payakaraopeta Primary Agricultural Co-operative Credit Society Ltd.**¹, submits that in case of rejection of plaint under Order VII Rule 11(d), an appeal only lies and the civil revision petition is not maintainable. He placed reliance on para 9 of the said decision, which reads as under:

“9. the learned Counsel for the respondent has also tried to contend that the revision is not maintainable against the orders of the rejection of the plaint and that the revision petition is therefore liable to be dismissed on such ground also. It is an admitted fact that the present revision petition is filed against the orders of rejection of plaint under Order 7 Rule 11(d) C.P.C. Such an order amounts to a decree against which only appeal lies before the concerned forum and not revision under Section 115 C.P.C. This view is clearly expressed by various High Courts in the decisions reported in **Rameshwar vs. Bhagwati Devi**², **Mohd. K. Rowther vs. Hasan Rowther (F.B.)**³ and **Sudharsh Kumar Ahuja vs. R.P. Joshi**⁴. Therefore, in this view also the revision is liable to be dismissed. For the foregoing reasons this revision petition is liable to be dismissed.”

8. It is obvious that the revision petitioner in this case has been granted time by the trial Court for payment of the Court fee till 01.08.2016 5.00 PM. The revision petitioner has not paid any Court fee as directed. He filed this revision on 30.08.2016. The learned counsel for the revision petitioner

¹ 1997 (4) ALT 45

² AIR 1982 Patna 75

³ AIR 1972 Kerala 56

⁴ AIR 1985 Punjab 260

submits that the trial Court has extended the time till 30.12.2016. But, there is no material on record to prove the extension of time. If really time is extended, this revision becomes premature and liable to be dismissed.

9. The revision is not maintainable against an order passed under Order VII Rule 11 (b) of CPC in view of the fact that the petitioner has not complied with the condition imposed by the trial Court. If really the trial Court has extended the time till 30.12.2016, this revision becomes premature and consequently liable to be dismissed. However, it is obvious that the revision is not maintainable against the orders passed by the trial Court in rejecting the plaint under Order VII Rule 11 (b) of CPC. The remedy available to the petitioner is an appeal.

10. Considering the facts and circumstances of this case, this civil revision petition is not maintainable. The petitioner is at liberty to file an appeal in accordance with law.

11. In the result, the civil revision petition is rejected. No order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

G.SHYAM PRASAD, J

Date: 11.11.2016
TJMR