

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

CRP.No.4286 of 2016

O R D E R:

The defendants 1, 2 and 4 in O.S.No.13 of 2014, on the file of the Senior Civil Judge, Dharmavaram, Anantapur District, are the petitioners in the present revision filed under Article 227 of the Constitution of India.

2. This revision calls in question the order dated 27.07.2016 passed by the said Court in I.A.No.162 of 2016.

3. Heard the learned counsel for the petitioners, Sri Maheswar Rao Kunchem and Sri Aswath Narayana for the respondent.

4. The respondent herein instituted the said suit for recovery of money on the foot of a mortgage. After conclusion of the arguments on behalf of the plaintiff, the petitioners herein filed I.A.No.162 of 2016 under the provisions of Order 18 Rule 17 read with Section 151 of the Code of Civil Procedure, praying to recall PWs.1 and 2 for further cross-examination.

5. The respondent herein filed a counter, resisting the said application. The learned Senior Civil Judge, by way of an order under challenge dated 27.07.2016, dismissed the said application.

6. It is contended by the learned counsel for the petitioners that the order passed by the Court below is erroneous, contrary to law and opposed to the very spirit and object of the provisions of Order 18 Rule 17 of the Code of Civil Procedure. It is further submitted that had the contents of the affidavit filed in support of the application been considered in a proper perspective, the order under challenge would not have emanated. It is also the submission of the learned counsel that the Court below ought to have adopted liberal approach while considering the present application. It is

further submitted by the learned counsel that in the event of giving opportunity to the petitioners herein to cross-examine PWs.1 and 2, the same would be helpful for the Court below to arrive at just and reasonable conclusion in the matter.

7. On the contrary, it is contended by the learned counsel for the respondent/plaintiff that there is no error nor there exists any infirmity in the impugned order, as such, the order under challenge is not amenable for any judicial review under Article 227 of the Constitution of India. It is further submitted that the present application is only an attempt to fill up the lacuna in the case of the petitioners and the same cannot be permitted under the provisions of Order 18 Rule 17 of the Code of Civil Procedure.

8. In the above backdrop, now the question that arises for consideration of this Court in the present revision is_ “Whether the Court below is justified in dismissing the application filed by the petitioners herein and whether the impugned order is sustainable and tenable in the eye of law?

9. There is absolutely no dispute on the reality that the present application came to be filed after conclusion of the arguments on behalf of the plaintiff and when the said suit was coming up for arguments on behalf of the defendants. In the affidavit filed in support of the application the petitioner No.2 deposed that she could not instruct her advocate thoroughly while cross-examining PWs.1 and 2 and that she had no personal knowledge of the facts of the suit and only now the petitioners learnt some more facts regarding the case.

10. According to the provisions of Order 18 Rule 17 of the Code of Civil Procedure, the Court is empowered to recall any witness who has been examined and may put such questions to him as the Court thinks fit.

11. It is a settled and well established proposition of Law as laid down in the Judgment of the Hon'ble Apex Court in *VADIRAJ NAGGAPA VERNEKAR (D) THROUGH LRS. V. SHARAD CHAND PRABHAKAR GOGATE*¹ that the power conferred under Order 18 Rule 17 is to be exercised very sparingly and such power cannot be invoked to fill up the lacunae in the evidence of the witness which is already recorded. On the other hand, the same is intended to clear any ambiguity that may arise or had arisen during the course of examination. In the instant case, the tenor of the affidavit filed in support of the application clearly discloses that the present application is obviously intended to fill up the lacunae.

12. A perusal of the order impugned passed by the Court below clearly discloses that the learned Judge while dismissing the application categorically recorded valid reasons for arriving at the conclusion. The Court below observed that the cross-examination portion of PWs.1 and 2 reveals that the cross-examination has been done concentrating on legal notice contents and also regarding interest claimed. The Court below also took note of the issue that the plaintiff never claimed any interest on the cheque amount. The Court below recorded valid and cogent reasons for dismissing the application. It is a settled and well established proposition of law that the invocation of jurisdiction of this Court under Article 227 of the Constitution of India is permissible only in the cases where the order impugned suffers from patent perversity and lack of jurisdiction. In the instant case, no such contingency exists. Therefore, in the facts and circumstances of the case and having regard to the reasons assigned by the Court below in the impugned order, this Court does not find any reason to meddle with the

¹ AIR 2009 SC 1604

order passed by the Court below in exercise of power under Article 227 of the Constitution of India.

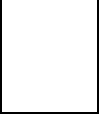
13. For the aforesaid reasons, the revision is dismissed. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No costs.

A.V.SESHA SAI, J

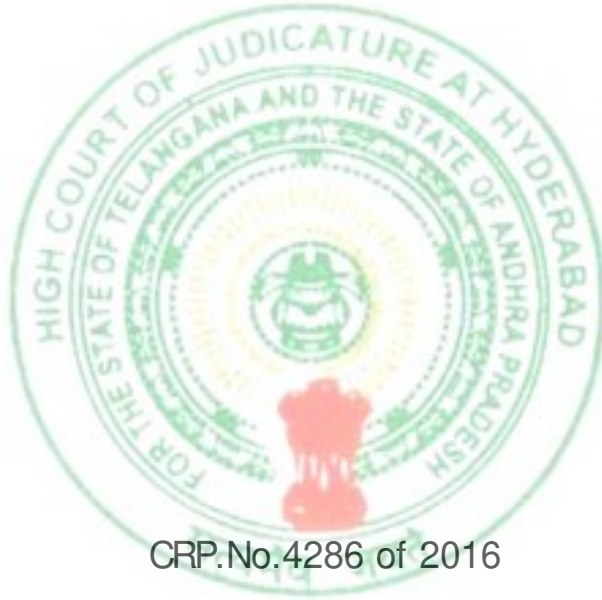
Date:16.12.2016

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Dated 16th December, 2016

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