

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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CIVIL REVISION PETITION No.4140 of 2010

ORDER:

This civil revision petition under Article 227 of the Constitution arises out of the order dated 24.06.2010 passed by the learned Principal Junior Civil Judge, Vijayawada, in I.A.No.843 of 2010 in O.S.No.308 of 2010.

The petitioner – Sangam is the defendant in the said suit. It filed the subject I.A. under Order VII Rule 11 C.P.C. seeking rejection of the plaint. By the order under revision, the trial Court dismissed the said I.A.

By order dated 24.09.2010, this Court granted interim stay of all further proceedings in the suit pending further orders.

Sri Narasimha Rao Gudiseva, learned counsel for the petitioner/defendant, would contend that the suit is barred by law in terms of the issues raised therein having already been decided in a prior suit. According to the learned counsel, the doctrine of *res judicata* under Section 11 C.P.C. would bar the present suit as the issues raised therein have already been settled in O.S.No.1727 of 2004 on the file of the learned III Additional Junior Civil Judge, Vijayawada.

Clause (d) of Order VII Rule 11 C.P.C. states to the effect that the plaint should be rejected if the suit appears from the statement in the plaint to be barred by any law. This provision has no application to a case where the doctrine of *res judicata* is sought to be pressed into service. The trial Court would necessarily have to examine whether the said doctrine would have application on facts and such an exercise cannot be undertaken upon a petition filed under Order VII Rule 11 C.P.C. The I.A. filed by the petitioner was therefore not maintainable and there is no irregularity in the order passed by the trial Court dismissing the same.

The C.R.P. is devoid of merit and is accordingly dismissed.

Interim order dated 24.09.2010 shall stand vacated.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

Date:09.02.2016

GJ