

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.1945 of 2016

ORDER:

This revision is filed questioning the order dated 09.12.2015 passed in I.A.No.48 of 2014 in O.S.No.31 of 2010 on the file of the Senior Civil Judge, Rayachoty, Kadapa District.

2. Revision petitioners herein are defendants in the above referred O.S.No.31 of 2010. They filed above referred application to receive additional written statement and that application was resisted by plaintiffs and on a consideration of contentions and rival contentions of both parties, trial Court dismissed the application upholding the objections of plaintiffs.

3. Heard arguments.

4. Advocate for revision petitioners submitted that trial Court failed to examine the scope of Order VIII Rule 8 of the Code of Civil Procedure, 1908, and ought to have given opportunity to revision petitioners to file their additional written statement. He further submitted that no additional or new plea was taken in the additional written statement, but the plea taken earlier was only elaborated by way of additional written statement. He further submitted that the plea that was taken in additional written statement is a legal plea and no prejudice would be caused to plaintiffs, if additional written statement is received.

5. I have perused the material papers including the impugned order dated 09.12.2015.

6. As seen from the material, revision petitioners herein specifically contended in the written statement (main) that suit is not maintainable. Now, the very same plea is again taken in the proposed additional written statement by incorporating certain factual aspects. Advocate for revision petitioners contended that when a plea with regard to maintainability of suit is taken, which can be taken at any point of time, there cannot be any

prejudice to plaintiffs even if the additional written statement is received. The contention of advocate for revision petitioners cannot be accepted because if the suit is not maintainable, same contention can be raised before the Court below by virtue of a plea that was already taken in the written statement (main). Without exhausting that remedy, filing additional written statement with certain new facts on the ground that defendants are elaborating the plea of maintainability cannot be permitted; and, the Court below rightly refused to receive the additional written statement.

7. I do not find any jurisdictional error or any illegality in the impugned order dated 09.12.2015 to be interfered by this Court while exercising revisional powers. Learned Senior Civil Judge rightly applied the legal position and dismissed the application and I do not find any ground to interfere with the same.

8. For these reasons, this Civil Revision Petition is liable to be dismissed, being *de void* of merit. Accordingly, the Civil Revision Petition is dismissed at the stage of admission. No costs. Miscellaneous petitions, if any, pending in this revision, shall stand dismissed.

S. RAVI KUMAR, J

24th August, 2016.
Bvv