HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.1814, 2010, 2011 AND 2012 OF 2015

COMMON ORDER:

The revisions vide C.R.P.Nos.1814 and 2010 of 2015 are preferred by the sole defendant in O.S.No.27 of 2010 aggrieved by the dismissal orders in I.A.No.196 of 2015 (C.R.P.No.1814 of 2015) filed under Order VIII Rule 1-A of Civil Procedure Code(for short, "CPC") and I.A.No.195 of 2015 (C.R.P.No.2010 of 2015) filed under Order VI Rule 17 of CPC, whereas, the sole defendant in O.S.No.23 of 2010 preferred revisions vide CRP No.2012 and 2011 of 2015 against the dismissal orders in I.A.No.199 of 2015 filed under Order VI Rule 17 of CPC and I.A.No.198 of 2015 filed under Order VIII Rule 1-A of CPC.

2. Both the suits were filed by the self-same plaintiffs, none other than wife and husband, against the respective defendants for recovery of money.

3. The defendants filed written statement in both the suits of the year 2010 and appears in the first week of July. In the written statements in both the suits, there is a pleading that there was a discharge of amount due of Rs.25,00,000/- in O.S.No.23 of 2010, and Rs.20,00,000/- in O.S.No.27 of 2010 by payment to one C.Madhubabu, who is the son of the plaintiffs.

4. The mention in the written statement regarding the date of receipt said to have been passed by the plaintiffs' son Madhubabu, was on 20.01.2010.

5. After filing of the written statement, issues were framed in both the suits after hearing and plaintiffs filed chief examination affidavit to say trial commenced. It is thereafter, amendment of the written statement sought by the respective defendants in both the suits mentioning that there is a mistake of mention in the year column as '2010' in stead of '2008' in the date portion of the said two receipts for the respective amounts and thereby the respective written statements are required to be amended. For that purpose, respective defendants filed two applications in each of the two suits, one is for receiving the said receipt issued by C.Madhu Babu for discharge of amount and mark as exhibit on their behalf by condoning the delay in filing the same and the other is for amendment of written statement

filed under Order VI Rule 17 of CPC.

6. The contest of the plaintiffs in opposing 4 applications viz; I.A.No.195 and 198 of 2015 for amendment of the respective written statements of the year from ‘2010’ to ‘2008’ of the respective receipts and I.A.No.196 and 199 of 2015 for receiving the said receipts and mark by condoning delay in filing the same, is that those receipts are fabricated and created and thereby in one of the notices issued in two suits before its filing for one returned and the other served in reply to it with no whisper about such a receipt or even existing for amendment, trial already commenced and there is no due diligence that could be shown for the belated filing of the receipts and no explanation why not filed with written statement.

7. It is pursuant to which the trial Court dismissed the four applications impugned herein covered by the four revisions.

8. Heard both sides and perused the material on record.

9. The scope of the Order VI Rule 17 CPC, is different from the scope of Order VIII Rule 9 of CPC., vide **Nannapaneni Sowbhagyamma Vs. Nannapeneni Rama Rao**[1]**.** No doubt, Order VI Rule 17 even applies to written statement if at all to amend the existing written statement by deleting any portion with substitution. Thus the difference from Order VI Rule 17 to Order VIII Rule 9 of CPC., is that it speaks of only additional pleadings with leave of the Court and not for deletion and substitution. It can be said even due diligence as contemplated by the proviso to Rule 17 of Order VI CPC not shown, there is no bar for filing additional pleading by additional written statement explaining the so called typographical mistake in mention of the year ‘2010’ for ‘2008’ in the so called receipt; as any admission including in pleading can be explained away at any time for admission though relevant not a conclusive unless attained finality for non-withdrawal and non-explaining away as per the settled law. Thus, there is nothing to interfere with the impugned dismissal orders of the trial Court of the amendment of pleadings by sitting in revision within its limited scope, but for made it clear that, it no way takes away right of the respective revision petitioners to file additional written statement explaining the so called mistaken mention of the year ‘2010’ to ‘2008’ in the two receipts.

10. So far as the petitions for belated receiving of the

respective receipts in the two suits that were ended in dismissal impugned in the respective revisions concerned, at least photostat copies would have been filed with written statement. Unless sufficient cause is shown for non-production with a pleading at or before settlement of issues, for belated receiving once there is a judicial exercise vested with the trial Court, this Court feels nothing to interfere by sitting in revision against the exercise of discretion when it shows by application of mind, for even shown other view also possible that is not a ground by sitting in revision and interfere with the order impugned. However, it is not the be all and end all for the very provision contemplated by sub-rule 4 of Rule 14 of Order VII of CPC, is very clear that to confront the document with the opposite party in the cross-examination either under Section 145 or 155(3) of the Indian Evidence Act or even to hand over to the witness to refresh his memory as per the Section 159 of the Indian Evidence Act, it need not be filed with application to receive by condoning delay. Once such a concession is available, the defendant can avail it, if at all to confront in the cross-examination of plaintiffs' witness the said receipts to bring on record without need of filing an application seeking to receive the receipts belatedly filed, by condoning the delay.

11. Thus, subject to the above observations, these four Revisions are dismissed. No costs. Pending miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 20.07.2016
Vvr

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[1] (2015) 6 ALT 159