

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.2576 of 2016

ORDER:

Heard learned counsel for the petitioner, who is defendant by name T.Vamshi Krishna Naik, in the suit filed by Smt. K. Vijaya Lakshmi claiming to be the wife of the defendant.

The suit is for recovery of amount based on plaint enclosed document dated 15.02.2010 for Rs.5,00,000/-. The plaint Para '6' speaks the cause of action is the date of execution of the agreement undertaking to pay for obtaining mutual consent divorce and from demand and refusal in December 2010, which is alleged subsequent to the date of agreement. The defendant after put forth his appearance and filed the written statement, filed I.A.No.562 of 2012 seeking to reject the plaint under Order VII Rule 11 (a) and (d) CPC saying there is no subsisting cause of action and otherwise the suit is barred by law.

A perusal of the plaint as referred supra shows cause of action, what is contest is the cause of action is alleged as false and the so called agreement on its face is quite unbelievable and absurd and it is created and propounded and the suit claim is fictitious and liable to be rejected as contended by him in the written statement already filed. The consideration of the parameters for rejection of plaint as contemplated by Order VII Rule 11 (a) and (d) CPC clearly envisages are different from consideration of the claim on merits from the written statement defence subject to framing either a preliminary issue or other issues on formulating proper issues to decide as part of adjudication. Coming to the 2 contentions raised for nothing shown of claim is barred by limitation by the date of filing of the suit in 2011 of the alleged agreement in February 2010. The only thing remained to consider is lack of cause of action and as referred supra, the lack of cause of action as per the plaint averments are different from

sustainability or otherwise cause of action is propounded. Here the contentions are against sustainability for there is a cause of action pleaded.

Having regard to above there is nothing to say that the plaint on its face liable to be rejected under Order 7 Rule 11 clause (a) and (d) CPC for lack of cause of action or barred by law, but for left open with reference to the defence in the written statement propounded after hearing and formulation of issues under Order 14 CPC for framing of specific issue in this regard if at all to decide any preliminary issue. Subject to the above observation, there is no ground to admit the revision and keep the matter pending.

In the result, the revision is disposed of at the admission stage.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 17.06.2016
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