

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5211 of 2010

ORDER:

In spite of service of notice there is no representation on behalf of the first respondent. Notice sent to the second respondent by Registered Post with Acknowledgment Due was returned on the ground that the addressee left. Hence, heard learned counsel for the petitioners and perused the record.

The present Civil Revision Petition is filed by the petitioners/plaintiffs under Article 227 of the Constitution of India, aggrieved by the order, dated 06.07.2010 passed in I.A.No.52 of 2010 in O.S.No.1434 of 2009 on the file of the XXI Junior Civil Judge, City Civil Court, Hyderabad, wherein and whereunder an application filed under Order VIII Rule 6 of C.P.C. seeking permission to file rejoinder to the written statement was rejected on the ground that the same is not maintainable under law and the petitioners are not entitled for filing rejoinder to the written statement filed by the defendants.

A perusal of the material on record would show that the petitioners/plaintiffs filed a suit for permanent injunction restraining the defendants, his men, servants, agents, henchmen and any other person or persons claiming through them from interfering with their possession and enjoyment over the suit schedule property. Written statement came to be filed by the defendants disputing the allegations made in the plaint and raising new allegations against the plaintiffs without any basis. Hence, the petitioners filed I.A.No.52 of 2010 seeking leave of the Court

to file rejoinder to the written statement. It is also stated that if no leave is granted, the petitioners will be put to great loss and hardship.

Counter came to be filed opposing the said petition stating that the main objection that was raised before the Court was quoting wrong provision of law and later denying the allegations made in the petition stating that no new plea or no new allegations are made against the plaintiffs.

After considering the rival submissions, the trial Court dismissed the said application stating that the petition is not maintainable under the provisions of law referred to in the application and that the petitioners failed to disclose the new allegations raised by the defendants against them in their written statement. Challenging the same the present Civil Revision Petition is filed.

Learned counsel for the petitioners submits that mere mentioning of wrong provision of law at the time of filing of the petition by itself cannot be a ground to reject the petition in view of the judgments of this Court in C.R.P.No.4210 of 2014.

In C.R.P.No.4210 of 2014 this Court was dealing with a situation, where a rejoinder was sought to be filed to the counter filed in an application seeking temporary injunction. The said I.A. was rejected on the ground that Order VIII Rule 9 of C.P.C. do not apply. While referring to the provisions, this Court held as under:

“The substantive rights of the parties cannot be defeated by making hyper technical approach. Mere quoting of a wrong provision, obviously out of ignorance on the part of the counsel appearing for the parties, cannot constitute a ground for rejection of an application, if the

same is otherwise permissible under any other provision of law.”

This Court held that mentioning of wrong provision of law should not lead to rejection of the application.

Coming to the main issue, this Court in ***Sardar Darshan Singh and others v. Smt. Surjeeth Kaur***^[1] observed as under:

“17. Leave to file the rejoinder may be rejected only after going through the same, in case, the Court is of the opinion that such a rejoinder alters the cause of action pleaded in the plaint or on the ground that it makes out a new case resulting in injustice to the other side. Since admittedly the draft rejoinder was not filed, the Court below is not justified in presuming that the petitioners are proposing to set up a new plea.

18. The Court below committed an error in dismissing the application even without looking into the draft rejoinder.”

From the above, it is clear that rejoinder to the written statement can be rejected only after going through the draft rejoinder and if the Court is of the opinion that the said rejoinder alters the cause of action pleaded in the plaint or on the ground that it makes out a new case resulting in injustice to the other side. Therefore, the Court has to primarily look at the draft rejoinder and if it comes to a conclusion that the pleadings therein totally alter the cause of action or it makes out a new case, it has to be rejected. Hence, the trial Court was not justified in rejecting the application without looking into the contents of the rejoinder.

In view of the judgment of this Court in ***Sardar Darshan Singh case (1 supra)*** the order under challenge is set aside and the trial Court is directed to peruse the rejoinder filed along with the petition and then decide the issue, in terms of the judgment

referred to above, after hearing all the necessary parties.

With the above direction, the Civil Revision Petition is disposed of. There shall be no order as to costs.

Miscellaneous Petition, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

10.02.2016

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[\[1\]](#) AIR 2007 AP 201