

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 4099 OF 2016

ORDER :

This Revision is directed against the order dated 11.07.2016 in I.A.No. 603 of 2016 in O.S. No. 177 of 2011 on the file of the I Additional District Judge's Court at Nellore.

The petitioner herein is the plaintiff, who filed the suit seeking a direction to the respondents/defendants therein to pay the suit amount jointly and severally and also the interest on suit amount from the date of institution till the date of realisation. Trial in the suit commenced. It is at that stage, the defendants have come up with I.A. No. 603 of 2016 requesting the Court to frame an additional issue '*as to whether the plaintiff has no financial capacity to lend Rs. 10,00,000/- to the defendants on 20.02.2010*'. The plaintiff opposed the said Application. However, the learned Judge, through the order under Revision, allowed the same on the ground that for better adjudication of the *lis*, in the interests of justice, additional issue requires to be framed.

Learned counsel for the petitioner/plaintiff Sri P. Subash contends that the suit was filed on the foot of a promissory note, execution of which has also been admitted, and hence, the order passed by the learned Judge allowing the Application to frame an additional issue as to the financial capacity of the plaintiff, that too at the advanced stage of recording evidence, is not at all warranted. He would further submit that having dismissed I.A.No.602 of 2016 filed by the respondents/defendants to produce the documents to prove financial incapacity of the plaintiff on 11.07.2016, the Court below ought to have dismissed the present

I.A.No. 603 of 2016 filed to frame additional issue as regards the financial incapacity of the petitioner to lend such huge money, is what the learned counsel submits.

On the other hand, Sri P. Sridhar Reddy, learned counsel for Respondents 1 to 3 submits that in the written statement filed by his clients in the suit, a categorical plea was taken that the plaintiff does not have the financial capacity and as a matter of fact, on account of certain transactions made earlier in relation to real estate business, unfilled signed promissory notes were obtained by one of the attestors of the promissory notes, which were being misused by the plaintiff. According to him, though these aspects have been pleaded specifically in the written statement, the Court below failed to frame an issue which necessitated taking out an Application for that purpose.

From a perusal of the written statement, a copy of which has been placed before this Court, it is evident that the defendants/respondents had pleaded that in 1994, the 1st attestor of the promissory note approached the 1st defendant seeking investment into real estate business. Accordingly, the defendants and the 1st attestor invested huge amounts in the real estate business and due to lack of further investment, at the request of the 1st attestor, for securing amounts for their business from the 3rd parties, the defendants handed over 20 unfilled promissory notes duly signed on the revenue stamp in the year 1999. It was further pleaded that the plaintiff does not have the capacity to lend such huge money, however, based on the promissory notes obtained from them, he has filed three suits in different Courts; one at Kavali and the other two at Nellore.

In the light of the specific pleas taken in the written statement, particularly considering the averment that three suits have been filed for recovery of huge sums, for proper adjudication of the suit claim, this Court is of the opinion that the petitioner/ plaintiff should be in a position to establish his capacity to lend such sums. Since the issues already framed do not deal with that aspect, the order under Revision, through which the learned Judge allowed the Application to frame an additional issue, particularly on the fiscal ability of the plaintiff, cannot be found fault with.

However, this Court is constrained to make an observation that the order dated 11.07.2016 lacks minimum reasons, which are said to be the live-links for coming to such a conclusion. This Court expects that in future, while passing the orders, the learned Judge bears this fact in mind and assigns reasons to justify the conclusions arrived at, in a given case.

The Civil Revision Petition, with this order, stands dismissed.
No costs.

Consequently, the miscellaneous Applications, if any shall also stand dismissed.

CHALLA KODANDA RAM, J

16th December 2016

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