

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5245 of 2015

ORDER:

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This civil revision petition under Article 227 of the Constitution of India by the petitioner/plaintiff is directed against the orders dated 21.09.2015 of the learned II Additional Senior Civil Judge, Kakinada passed in IA.no.517 of 2015 in OS.no.978 of 2014 filed under Section 151 of the Code of Civil Procedure, 1908 to receive the annexed rejoinder.

2. I have heard the submissions of the learned counsel for the revision petitioner/plaintiff ('the plaintiff', for brevity) and the learned counsel for the respondent/defendant ('the defendant', for brevity). I have perused the material record.

3. The case of plaintiff in support of the request to receive the rejoinder, in brief, is this:

The suit is filed for recovery of money on the foot of a promissory note. The defendant is resisting the suit. The defendant had filed a written statement with false and untenable allegations. Therefore, the plaintiff is constrained to file the rejoinder and the present petition to permit the plaintiff to receive the rejoinder to bring to the notice of the Court that the pleas taken by the defendant are false.

4. The case of the defendant, in brief, is this:

The material allegations in the affidavit of the plaintiff filed in support of the petition are false. The proposed rejoinder is nothing but a replica of the plaint. The material allegations in the rejoinder are false and untenable. Hence, the same cannot be considered by the Court.

5. Having heard the submissions of the learned counsel for both the sides, the trial Court, by the order impugned, had refused to consider the request of

the plaintiff to receive rejoinder on file on the ground that the averments in the rejoinder are only a repetition of the averments in the plaint and that no facts explaining the circumstances to deny the contentions of the defendant in the written statement are mentioned in the rejoinder. Therefore, the aggrieved plaintiff is before this Court.

6. The learned counsel for the plaintiff while reiterating the case of the plaintiff and while bringing to the notice of the Court certain averments in the written statement would contend as under: "In the written statement filed in a suit for recovery of money, the defendant had resorted to saying that the plaintiff is having extra marital relationships and that he had earned a lot of money by accepting illegal gratifications during the course of his employment and that he is also helping antisocial elements by misusing his white collar job and that in view of the said allegations and other allegations in the written statement, the plaintiff is constrained to seek permission to file the rejoinder."

7. The learned counsel for the defendant while reiterating the case of the defendant and supporting the orders of the Court below would contend that no grounds are made out for receiving the rejoinder.

8. I have carefully perused the material record and bestowed my attention to the facts and the submissions. A plain perusal of the written statement would show that the defendant, apart from denying the plaint averments, made certain averments in the written statement in regard to alleged extra marital relationship of the plaintiff. Further, in the written statement it is also averred that the plaintiff, during the course of his employment had earned a lot of money by accepting illegal gratifications and by helping antisocial elements and by misusing his white collar job and that he had spent monies earned by him on illegal acts and vices like womanizing etcetera.

9. In view of the said and other allegations in the written statement, the plaintiff is now seeking to file a rejoinder to deny the allegations made in the written statement. In the well considered view of this Court, the observation of the trial Court that the averments in the rejoinder of the plaintiff are only a repetition of the plaint averments is not correct. Further, in view of the facts

and circumstances of the case and for the above said reasons, this Court finds that a case is made out for granting permission to the plaintiff to file rejoinder and that, therefore, the order impugned brooks interference.

10. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, IA.no.517 of 2015 in OS.no.978 of 2014 is allowed and the rejoinder filed by the plaintiff is received on file. The trial Court, after ascertaining upon what material propositions of fact or of law the parties are at variance, shall now frame the relevant additional issues on which the right decision of the case appears to depend and shall dispose of the suit as expeditiously as possible and preferably within six (06) months from the date of the receipt of a copy of this order.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

26th April, 2016
Vjl