

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4916 of 2016

ORDER:

1) The present Civil Revision Petition is filed under Article 227 of the Constitution of India, challenging the order dated 16.06.2016 passed in I.A.No.224 of 2016 in O.S.No.155 of 2015 on the file of the Additional Senior Civil Judge, Madanapalle, wherein and whereunder an application filed under Section 151 of C.P.C. to conduct joint trial in O.S.No.154 of 2015 and O.S.No.155 of 2015, was dismissed.

2) The facts in issue are as under:

3) The respondent herein, who is the plaintiff before the trial Court, filed two suits O.S.No.154 of 2015 and 155 of 2015 against the revision petitioner/defendant basing on promissory notes dated 04.04.2012 and 10.06.2013. In both the suits the revision petitioner/defendant filed his written statement. Subsequently issues were framed. The respondent/plaintiff filed chief affidavits in both the suits and documents were also marked. At that stage the revision petitioner/defendant filed I.A.No.224 of 2016 seeking clubbing of both the suits for a joint trial. A counter came to be filed by the respondent opposing the petition contending that the cause of action and the reliefs sought for in both the suits are different and there is no provision to club both the suits. It was further stated in the counter that the

petitioner/defendant did not deny his signature on both the promissory notes and as such there is no necessity to club both the suits for joint trial.

4) After considering the rival submissions made, the trial Court dismissed the said petition. Aggrieved by the same, the present Civil Revision Petition is filed.

5) Learned counsel for the petitioner mainly submits that as parties in both the suits are one and the same and the relief sought for in both the suits is also for recovery of money basing on the promissory notes, it would be proper if both are tried together. He further submits that while filing written statement, the petitioner took same defence in both the suits.

6) Reiterating the arguments that were advanced before the trial Court, the learned counsel for the respondent would submit that issues are already framed and the respondent/plaintiff filed his chief affidavits in both the suits and documents are also marked. Since the suits are now coming up for cross examination of PW.1, he opposes clubbing of both the suits.

7) As seen from the record, the plaintiff and the defendant in both the suits are one and the same. O.S.No.154 of 2015 came to be filed for recovery of Rs.128450/- with future interest @ 24% p.a. basing on a promissory note dated 04.04.2012, where as O.S.No.155 of 2015 came to be filed for recovery of Rs.1,07,150/- with future interest @ 24% p.a. basing on the promissory note

dated 10.06.2013. Both the suits were filed on the same day ie. on 24.03.2015. In both the suits the defendant took the plea that the plaintiff lent a sum of Rs.2,00,000/- to the brother of the defendant by name S.Kaleemulla and obtained a mortgage deed from him on 18.07.2007 and at that time as a collateral security empty cheques and empty printed promissory notes were executed by the defendant.

8) Learned counsel for the plaintiff submits that there is no provision in C.P.C. to club both the suits.

9) In *M/s. Chittivalasa Jute Mills v. M/s. Jaypee Rewa Cement*¹ the Apex Court observed that the inherent power under Section 151 of the Civil Procedure Code can be exercised for the purpose of consolidation of suits.

10) In view of the judgment referred to above; as the defence taken in both the suits being one and the same; and as the parties to the suit are also one and the same, it would be just and proper if both the suits are tried one after the other on the same day. It is also to be noted that in both the suits chief affidavits of PW.1 are filed and documents are marked.

11) Having regard to the above and in order to avoid inconsistency in the judgment, both the suits may be taken up together one after the other on the same day and judgments to be pronounced in both the suits on the same day.

¹ AIR 2004 SC 1687

12) Accordingly, 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

20.12.2016

gkv

