

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.5859 of 2011

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful plaintiff is directed against the common order dated 11.08.2011 of the learned II Additional Junior Civil Judge, Vijayawada passed in I.A.No.472 of 2011 and I.A.No.476 of 2011 in O.S.No.145 of 2011, insofar as that common order related to the dismissal of I.A.No.472 of 2011, which is filed for reopening the evidence on the side of the plaintiff.

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 facts, which are germane for consideration, in brief, are as follows:-

The plaintiff brought the suit against the defendant for recovery of money on the basis of various documents including the application made by the defendant for purchase of a motorcycle on hypothecation scheme from the plaintiff's firm, loan agreement, guarantee agreement, promissory note and a copy of the account, besides the demand notice which was issued prior to the institution of the suit. The defendant, who is resisting the suit, had *inter alia* contended in the written statement that the entire amount due to the plaintiff firm is discharged and that in fact, an excess amount of Rs.6,039/- was paid and that the defendant is entitled for refund of the same from the plaintiff's firm. While the trial was in progress, during the cross-examination of PW1 it has come to the knowledge of PW1 that exhibit A6-account copy is not a complete document and that it is only a part of the extract of the computerised account of the plaintiff concern. However, it is the extract of the relevant portion, that is, a part of the account with the entries relating to the suit transaction. Hence, the plaintiff thought it fit to file a complete extract of the account (copy of the computerised account) and, therefore, filed two applications, viz., I.A.No.472 of 2011 (the instant application for re-opening of

the evidence) and I.A.No.476 of 2011 (the other application to receive on file the complete copy of the said account) to substantiate its case. The defendants, by filing counter through the first defendant, resisted both the applications stating that PW1 was already cross-examined and that the document is now being sought to be filed only to cover up the laches in the cross-examination of PW1 and that the document now sought to be produced is a manipulated and a fabricated document. Having regard to the contentions and submissions in the pleadings, the trial Court had dismissed both the applications by the impugned common order. Hence, the plaintiff is before this Court.

4. It is apposite to mention that though by the impugned common order, even the application in I.A.No.476 of 2011 filed to receive the complete copy of the account was also dismissed by the trial Court, the plaintiff, for the reasons best known to it, had filed this Civil Revision Petition only assailing the common order insofar as it related to the dismissal of I.A.No.472 of 2011, which is filed for re-opening of the evidence. Thus, the plaintiff had not assailed the common order insofar as it related to the dismissal of its application filed for according permission for receiving on file the complete copy of the computerized account of the plaintiff.

6. The learned counsel for the revision petitioner would submit that exhibit A6, which is the last page of the computerised account extract is already marked and that in that exhibit A6, there are all the entries that are relevant to the suit transaction and that during the cross-examination of PW1, it is realised that the plaintiff has not filed the complete copy of the computerised account by mistake and that only part of the account copy, which was filed is marked as exhibit A6 and therefore, it has become necessary to file the aforementioned applications and that in view of the discharge pleaded by the defendant, no prejudice would be caused if the document sought to be produced is received on file after reopening the evidence on the side of the plaintiff.

7. On the other hand, the learned counsel for the defendants would submit

that document viz., the complete copy of the computerised account is now being sought to be filed only to cover up the laches and get over the admissions in the cross-examination of PW1 and that the trial Court was correct in dismissing both the applications. He would further submit that the complete copy of the computerised account, which is now being sought to be filed by the plaintiff, is a fabricated and a manipulated document.

8. I have given earnest consideration to the facts and the submissions.

8.1 To begin with, in the well considered view of this Court, this revision petition assailing only a part of the common order insofar as it related to the dismissal of the application in I.A.No.472 of 2011 filed for reopening plaintiff's evidence to enable the plaintiff to file the complete copy of the computerised account without assailing the other part of the common order insofar as it related to the dismissal of application in I.A.No.476 of 2011 filed for receiving the said document, is not maintainable and is hit by the principle enshrined in the doctrine of *res judicata*. In the well considered view of this Court, even if the application to reopen the plaintiff's evidence in I.A.No.472 of 2011 is to be allowed by allowing this revision petition, no purpose would be served, as already the application to receive the complete copy of the computerised account was dismissed by the trial Court and that the common order of the trial Court in that regard has become final as no revision petition challenging the said part of the common order is filed. Therefore, no useful purpose would be served by allowing this Civil Revision Petition. Hence, there is no need for this Court to go into the merits of the matter.

9. Nonetheless, the learned counsel for the plaintiff would contend that in case this Court allows this revision petition and consequently the application filed for reopening the evidence, the plaintiff can avail the opportunity to file a fresh application before the trial Court to receive the complete copy of the computerised account on file, as the dismissal of earlier interlocutory application in that regard is no bar under facts and in law for filing a fresh application for the same relief. In the well considered view of this Court, if that is the case, the plaintiff, by applying the same analogy, can as well file a

fresh petition for re-opening of his evidence. Viewed thus, this Court finds that there is no merit in the alternative contention to allow this revision petition, which is filed assailing only a part of the common order insofar it related to an interlocutory application in I.A.No.472 of 2011 for reopening of the plaintiff's evidence. Having regard to the reasons, this Court finds that there is no merit in the civil revision petition.

10. Accordingly, the Civil Revision Petition is dismissed. However, it is made clear that the plaintiff is at liberty, if it so desires and so chooses, to file fresh applications before the trial court for reopening of the evidence and for receiving the document. It is needless to mention that in case, the plaintiff files such applications, the trial Court shall dispose of the said applications in strict accordance with the procedure established by law, however, after giving an opportunity to the defendant to file counters. It is also made clear that this Court has not expressed any opinion as to the maintainability of such applications, which the plaintiff intends to now file before the trial Court, and hence, the trial Court shall consider the said aspect also on merits while disposing of the applications, which the plaintiff may file.

There shall be no order as to costs.

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

M.Seetharama Murti, J

10th February, 2016

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