

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.5237 of 2015

ORDER:

This Civil Revision Petition, by the unsuccessful 1st defendant/petitioner, under Article 227 of the Constitution of India, is directed against the orders dated 09.10.2015 of the learned XVIII Senior Civil Judge holding full additional charge of the post of the learned V Additional Senior Civil Judge, City Civil Court, Hyderabad passed in I.A.No.208 of 2015 in O.S.No.1740 of 2011 filed under Order VIII Rule 9 read with Section 151 of the Code of Civil Procedure, 1908 requesting to permit the first defendant to file additional written statement.

2. I have heard the submissions of the learned counsel for the revision petitioner/1st defendant ('1st defendant', for brevity) and the learned counsel for the 1st respondent/plaintiff ('plaintiff', for brevity). I have perused the material record.

3. The introductory facts are as under: "The plaintiff brought the suit against the 1st defendant and others for recovery of money. The 1st defendant filed a written statement and is resisting the suit. While so, the 1st defendant filed the present application for receiving the additional written statement. That petition was resisted by the plaintiff. On merits, the Court below dismissed the said petition. Challenging the said order of dismissal, the 1st defendant had filed this Civil Revision Petition."

4. The learned counsel for the 1st defendant would submit as follows: "The defence taken by the 1st defendant in the already filed written statement would disclose that the 1st defendant was running business and that due to the acts of the plaintiff, particularly the delay on its part and other acts, the 1st defendant had incurred heavy losses and he had to close his business. In the facts and circumstances stated, the Court below ought to have permitted

the 1st defendant to file the additional written statement. The Court below, ignoring the fact that the 1st defendant is entitled under law to take additional pleading at any stage of the matter, had erroneously come to a conclusion that the application filed to receive the additional written statement at the stage of arguments is liable for dismissal. The Court below had wrongly dismissed the said petition without scrutinising the documents, which are being relied upon by the 1st defendant in support of his request to file the additional written statement.”

5. On the other hand, the learned counsel for the plaintiff, while supporting the orders of the Court below and having drawn the attention of this Court to the averments in the affidavit of the 1st defendant filed in support of the petition, had submitted that absolutely no grounds, muchless valid grounds, are averred and made out for receiving the additional written statement on file and that not even the additional written statement is annexed to the petition filed for receiving the additional written statement and that the order impugned, in the facts and circumstances, does not warrant interference.

6. I have bestowed my attention to the facts and I have given earnest consideration to the submissions.

7. The request of the revision petitioner/1st defendant for receiving the additional written statement on file is based on the following submissions:

“The documents pertaining to the 1st defendant’s business transactions and a judgment in a matter on the file of the VII Special Magistrate at Hasthinapuram, Ranga Reddy District could not be traced and filed earlier by the 1st defendant at the time of filing the written statement, as they were mixed up with old papers. The said documents were traced recently. On a perusal of the said papers, it has become necessary to take the additional pleading by filing the additional written statement. Therefore, the present application is filed.” Per contra, the case of the plaintiff is that the suit is based on a chit fund transaction under which not only the 1st defendant but also the other defendants are jointly and severally liable and that the petition

is *mala fide*ly intended to stall the proceedings in the suit and that the 1st defendant/petitioner, having filed the written statement and having dragged on the matter, has now come forward with the present petition to permit him to file the additional written statement to mislead the Court and escape from the liability and that therefore, the petition is liable to be dismissed.

8. In the well-considered view of this Court, the very fact that the additional written statement, which the 1st defendant intended the Court below to receive on its file as additional pleading, is not enclosed to the petition, is itself a ground to dismiss the petition and also this Civil Revision Petition, without going into the merits of the matter. Be that as it may. Even the averments which the 1st defendant intends to take as additional pleadings in the additional written statement are not even stated in the affidavit filed in support of the petition or in the petition list. No explanation is forthcoming from the 1st defendant as to why the intended additional written statement is not annexed to the petition filed before the Court below. It is pertinent to note that according to the 1st defendant, the necessity to file the additional written statement has arisen as two documents, which are stated *supra*, are traced recently. Even the details of the said documents are not stated in the affidavit filed in support of the petition and without giving any details of the documents it is only baldly stated that one document pertains to the business transaction of the 1st defendant and that the other is a judgment passed by the Court of the learned VII Special Magistrate at Hasthinapuram, Ranga Reddy District and that they are recently traced. What was the necessity to file the additional written statement on tracing of some documents is also not stated in the affidavit filed in support of the petition. Therefore, this Court finds that absolutely no grounds, muchless valid grounds, are made out for permitting the 1st defendant to file additional written statement. For the aforesaid reasons, this Court finds that the Civil Revision Petition is devoid of merit and that the impugned order does not call for any interference.

9. In the result, the Civil Revision Petition is dismissed. There shall be no

order as to costs.

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

M. Seetharama Murthi, J

16th March, 2016
Bvv