

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Civil Revision Petition No.1893 of 2016

ORDER:

This Civil Revision Petition is filed against the order dated 28-12-2015 in I.A.No.242 of 2015 in O.S.No.66 of 2007, wherein the Court below allowed the application filed under Order 8 Rule-9 read with Section 151 C.P.C. permitting the 1st respondent to file additional written statement with a relief of counter claim by paying required court fees.

Learned counsel for the petitioner submits that though the 1st respondent/2nd defendant filed written statement in the year 2009, no counter claim is raised. Now after pw.1 is examined, the present petition is filed. The Court below without considering the aspect on limitation allowed the said petition. She also relied on the judgment of **N.Eshwara Prasad vs. Margadarshi Chit Fund Limited, Warangal**¹.

Learned counsel appearing for the 1st respondent submits that counter claim can be allowed at any stage and no prejudice would be caused to the petitioner, since the *status quo* order is continuing. He also submits that in the written statement also the 1st respondent raised the plea of illegal constructions made by the petitioners. In

¹ 2004(3) ALT 159

support of his contention, he relied on the judgment of

Vijay Prakash Jarath v. Tej Prakash Jarath².

It is to be seen that the trial Court after considering the written statement filed by the 1st respondent found that allegation of illegal constructions over the suit schedule property and allowed the I.A. The Apex Court in the judgment (2 supra) held as follows:

“ It is quite apparent from the factual position noticed hereinabove, that after the issues were framed on 18-10-1993, the counter claim was filed by the appellants before this Court (i.e. by defendant Nos 3 and 4 before the trial Court) almost two and a half years after the framing of the issues. Having given our thoughtful consideration to the provisions relating to the filing of counter claim, we are satisfied, that there was no justification whatsoever for the High Court to have declined, the appellant before this Court from filing his counter claim on 17-06-1996, specially because, it is not a matter of dispute, that the cause of action, on the basis of which the counter claim was filed by defendant Nos 3 and 4, accrued before their written statement was filed on 11-11-1992. In the present case, the respondent-plaintiff's evidence was still being recorded by the trial Court, when the counter claim was filed. It has also not been shown to us, that any prejudice would be caused to the respondent-plaintiff before the trial Court, if the counter-claim was to be adjudicated upon, along with the main suit. We are of the view, that no serious injustice or irreparable loss (as expressed in

² AIR 2016 Supreme Court 1304

paragraph 15 of Bollepanda P.Pooncha's case), would be suffered by the respondent-plaintiff in this case."

Moreover, this Court in judgment (1 supra) held that counter claim cannot be allowed at belated stage. In the judgment (2 supra), the Supreme Court, infact reversed the orders of High Court and permitted the counter claim after commencement of evidence also. More so, the trial Court exercised its discretion and allowed the I.A.

In view of above facts and circumstances, I am not inclined to entertain this Civil Revision Petition under Article 226 of Constitution of India.

Accordingly, the Civil Revision Petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending in this revision petition, shall stand closed.

A.RAJASHEKER REDDY,J

17-09-2016

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