

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.3380 OF 2016

ORDER:

Aggrieved by the order dated 04.03.2016 passed in I.A.No.309 of 2016 in O.S.No.393 of 2015 by the Principal Junior Civil Judge, Tirupati, wherein an application filed by the petitioner under Order VI Rule 17 CPC seeking amendment of the plaint was dismissed, the present Civil Revision Petition is filed.

Heard Sri T.C.Krishnan, learned counsel for the petitioner.

In spite of service of notice, there is no representation on behalf of the respondent.

The petitioner-plaintiff filed O.S.No.393 of 2015 against the respondent-defendant for recovery of amount based on a promissory note dated 14.10.2013. He also filed another suit in O.S.No.53 of 2016 against the very same respondent for recovery of amount based on promissory note dated 04.11.2013. In the instant case, the defendant is alleged to have borrowed a sum of Rs.2,00,000/- on 14.10.2013 for his family necessities by executing a promissory note, agreeing to repay the amount along with interest @ 24% p.a. As things stood thus, on 18.03.2016, an application came to be filed seeking correction of mistake, which occurred in the contents of the suit with regard to date of execution of promissory note. Though the promissory note pertaining to the present transaction was dated 14.10.2013, at three places in the plaint it was mentioned as 04.11.2013. Seeking rectification of said mistake, he filed an application, which

was dismissed by the Court below vide impugned order. Hence, this CRP.

Learned counsel for the petitioner mainly submits that said mistake was neither intentional nor wanton and that there is no malafide intention in wrongly mentioning the said date. He also submits that in respect of promissory note dated 04.11.2013, he filed another suit in O.S.No.53 of 2016. In his further submission that because of execution of two promissory notes on 14.10.2013 and 04.11.2013, the said mistake has occurred.

After considering the rival arguments advanced, the trial Court dismissed the application observing as follows:

“ 6. Admittedly, the present suit is filed by the petitioner with regard to alleged promissory note executed by the respondent in favour of petitioner dated 14/10/2013. There is no dispute with regard to date of execution of the present suit promissory note. The second promissory note is not the subject matter in this suit and there is no cause of action with regard to second promissory note. When that is so, petitioner cannot be permitted to amend the plaint with regard to date of second promissory note which is no way connected to the present suit so also the cause of action. The proposed amendment will cause prejudice to the respondent. Therefore the petitioner is not entitled for amendment of the plaint with regard to date of execution of second promissory note as detailed in the petition.”

As seen from the record, two civil suits came to be filed against the same defendant for recovery of money. Basing on promissory note dated 14.10.2013 O.S.No.393 of 2015 has been filed whereas basing on promissory note dated 04.11.2013,

O.S.No.53 of 2016 is filed. Therefore, the ground on which the Court below rejected the request of the petitioner appears to be incorrect. It may be true that no amendment shall be permitted after commencement of the trial, but the Court has the power to do so under exceptional circumstances. Hence, this Court is convinced with the arguments advanced by the learned counsel for the petitioner that due to existence of two promissory notes, the mistake in mentioning the dates has occurred.

Having regard to the same and in view of the representation of the learned counsel for the petitioner that the suit is coming up for evidence of the plaintiff only, the request of the petitioner can be considered.

Accordingly, the Civil Revision Petition is allowed by setting aside the order dated 04.03.2016 passed in I.A.No.309 of 2016 in O.S.No.393 of 2015 by the Principal Junior Civil Judge, Tirupati. There shall be no order as to costs.

Miscellaneous petitions pending in the revision, if any, shall stand closed. There shall be no order as to costs.

C. PRAVEEN KUMAR, J

Date: 21.10.2016

sur