

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Civil Revision Petition No.713 of 2017

ORDER:

This Civil Revision Petition is filed by the petitioner/1st defendant aggrieved by the order dated 04.01.2017 in I.A.No.627 of 2016 in O.S.No.28 of 2014 on the file of Senior Civil Judge, Rayachoty, Kadapa District, whereby the said Court dismissed the petition filed by the petitioner/1st defendant under Order 6 Rule 17 CPC seeking the permission of the Court to take plea of set-off.

2 a) The 1st respondent/plaintiff filed O.S.No.28 of 2014 against defendants 1 and 2 for realisation of a sum of Rs.4,58,663/-. The plaintiff's case is that it is a chit fund company and the 1st defendant joined as member on 28.05.2003 and as a subscriber for 50 months @ Rs.30,000/- p.m. The 1st defendant after paying 33 installments has participated in the auction conducted by the plaintiff on 17.12.2004 and became the successful bidder of the said chit for a discount of Rs.2,04,000/- which was confirmed by the plaintiff. The 2nd defendant stood as the surety to the 1st defendant. The 1st defendant received prize money of Rs.12,96,000/- on 08.04.2005. However, the total amount paid by the 1st defendant was only Rs.9,90,000/- and the future liability stood was Rs.5,10,000/-. The case of the plaintiff is that both the defendants committed default and accordingly an amount of Rs.4,58,663/- with interest @ 12% p.a was due to the plaintiff. Hence, the suit.

b) The 1st defendant opposed the suit. The plea of the 1st defendant is that on 28.05.2003 he joined as subscriber in the middle of the chit by paying Rs.2,99,220/- including admission fee vide receipt No.030187 and thereafter he regularly paid 33 installments. On 17.12.2004 he participated in the chit auction and he was declared as highest bidder by giving his acceptance for the bid amount of Rs.2,04,000/-. Hence, the plaintiff ought to have paid the prize money within stipulated period because the 1st defendant furnished all the necessary surety to the plaintiff within 15 days from the date of auction. But even after completing formalities, the plaintiff failed to pay prize money to the 1st defendant. Subsequently he approached the plaintiff for payment of prize money, but the Branch Manager of plaintiff company delayed payments on the pretext of misplacement of documents. On 08.04.2005, the Branch Manager issued a cheque bearing No.081654 dated 08.04.2005 for a sum of Rs.12,39,670/- only instead of Rs.12,96,000/- without any penalty for delay caused in payment of the amount. According to defendant, the plaintiff was liable to pay penalty of Rs.3,63,000/- for causing delay in payment of the chit prize amount together with interest. In this regard on 15.06.2005, the 1st defendant has caused a detailed demand notice to the plaintiff for payment of Rs.3,63,000/-. However, the plaintiff did not pay the amount. Subsequently also the exchange of notices took place between the parties. Thus, the 1st defendant contended that he was not liable to pay any amount to the plaintiff as alleged in the plaint.

c) While-so, the 1st defendant filed I.A.No.627 of 2016 under Order VI Rule 17 CPC stating that the respondent/plaintiff while paying prize money, caused delay of 3 months and thereby instead of paying an amount of Rs.12,96,000/- he paid only Rs.12,39,670/-. He would submit that whenever a delay was caused, the chit fund company was liable to pay the penalty also. As the respondent/plaintiff made payment with delay caused between 17.12.2004 and 08.04.2005, it was liable to pay Rs.3,63,000/- to the petitioner/defendant. Hence, the petitioner/defendant prayed that the said amount has to be given set-off to the defendant against the claim of the plaintiff. He thus prayed to allow the petition and permit him to take the plea of set-off for a sum of Rs.3,63,000/- against the claim of the plaintiff.

d) The respondent/plaintiff opposed the said petition and after due enquiry, the trial Court dismissed the said petition on the observation that the entire trial was concluded and at this stage, without adducing arguments the petitioner/1st defendant had come up with the instant petition. The trial Court further observed that the amount of Rs.3,63,000/- as claimed by the petitioner/defendant was an undetermined claim and he did not show the said claim as a set-off in his written statement and hence at the belated stage, he cannot be permitted to do so.

3) Heard arguments of Sri D. Seshasayana Reddy, learned counsel for petitioner and Sri Maheswara Rao Kuncham, learned counsel for 1st

respondent and with their consent, this CRP is disposed of at the admission stage.

4) The point for determination is:

“Whether there are merits in this petition to allow?”

5) **POINT**: The main plea of petitioner/1st defendant is that in payment of chit prize amount, there was a delay of more than three(3) months and therefore, the plaintiff company was liable to pay a penalty to a tune of Rs.3,63,000/- and in case the plaintiff's suit is ultimately decreed, the said amount of Rs.3,63,000/- has to be given set-off against the plaintiff's claim. Learned counsel for petitioner/1st defendant would submit that in Para 4 of his written statement, it was clearly mentioned that the plaintiff was liable to pay Rs.3,63,000/- for the delay caused by him in making the payment of chit prize money. In that view of the matter, his prayer for permission to take the plea of set-off should have been allowed by the trial Court but the trial Court erroneously dismissed his petition.

6) I find some force in the submission of learned counsel for petitioner. In Para 4 of the written statement, a copy of which is filed along with the material papers, the petitioner made a specific plea that the respondent/plaintiff caused delay in making payment of the chit prize amount and therefore, he was entitled to an amount of Rs.3,63,000/- towards penalty. However, in the written statement he has not made a specific plea to the effect that in case the suit were to be

decreed, the penalty amount of Rs.3,63,000/- should be given set-off. In my considered view, that may not be a ground to reject his request for set-off. It should be noted that mere permitting a party to take a plea does not mean that it has been approved. The concerned party has to establish his entitlement in respect of the plea taken by him. Same is the case in the present instance also. Mere allowing the petitioner/1st defendant to take a plea that the respondent/plaintiff was liable to pay him a penalty of Rs.3,63,000/- and in case the plaintiff's suit were to be decreed, the said amount has to be given set-off, does not mean that his plea is approved. The petitioner/defendant has to establish his entitlement to the penalty of Rs.3,63,000/- at the ultimate end of the trial.

7) So in the interest of justice, this Civil Revision Petition is allowed and the impugned order is set aside and consequently, I.A.No.627 of 2016 is allowed and the petitioner/1st defendant is permitted to take the plea of set-off as pleaded by him. The trial Court shall dispose of the suit on merits expeditiously, not later than three (3) months from the date of receipt of a copy of this order. No costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 16.02.2017

Note: Issue C.C by Monday

(b/o)
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