

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.2053 Of 2011

ORDER:

1 This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the order dated 25.03.2011 passed in I.A.No.851 of 2006 in O.S.No.441 of 2005 on the file of the Court of the Principal Junior Civil Judge, Mancherial, Adilabad District.

2 None appeared for the respondent on number of occasions. Hence this Court is inclined to dispose of the matter on merits.

3 The contention of the learned counsel for the petitioner is two fold. 1) The finding of the trail Court that the petitioner is not entitled to seek the relief of counter claim after filing of the written statement is not sustainable either on facts or in law, and 2) the findings recorded by the trail Court are **not** based on material available on record. Hence this is a fit case to allow the present revision petition.

4 A perusal of the record reveals that the respondent herein filed O.S.No.441 of 2005 on the file of the Junior Civil Judge, Mancherial against the petitioner for perpetual injunction. During the pendency of the suit, the petitioner herein filed I.A.No.851 of 2006 seeking permission of the trail Court to amend the written statement and also to file counter claim. It is the case of the petitioner that during pendency of the suit, the petitioner was dispossessed. Whether the petitioner was dispossessed pending the suit or not is purely a disputed question of fact, which can be decided at the time of full fledged trial only. If this Court expresses any opinion on this aspect, the same may cause prejudice to the parties to the proceedings. The

trial Court dismissed the I.A.No.851 of 2006 on the sole ground that the petition is not maintainable after filing of the written statement.

5 The learned counsel for the petitioner strenuously submitted that even after filing of the written statement, the defendant in the main suit is entitled to file a petition for amendment of the written statement seeking counter claim. To substantiate the argument, the learned counsel for the petitioner has drawn the attention of this Court to the ratio laid down in the following Judgments.

Smt. Shanti Rani Das Dewanjee v. Dinesh Chandra Day (died) by Lrs.¹ wherein it was held that *Counter claim can be filed even after filing written statement if cause of action had arisen before or after the filing of suit and such cause of action continued upto date of filing of written statement.*

M/s. Srikanth Spinners rep. by its Proprietor vs. State Bank of India, Toopran² wherein it was held that *“There is no bar to file counter claim after filing of written statement if cause of action for such claim accrues before filing written statement.”*

6 As per the principle enunciated in the cases cited supra, there is no bar to file counter claim by the defendant in the main suit even after filing of the written statement.

7 The trial Court dismissed the I.A on the simple ground that the petitioner is not entitled to seek file counter claim after filing of the written statement. It is not the case of the respondent that the counter claim claimed by the petitioner is barred by limitation. A

¹ 1997 (8) Supreme 374

² 1995 (2) ALT 746

perusal of the record, prima facie, reveals that the alleged cause of action accrued in favour of the petitioner is not barred by limitation. The facts of the case on hand are almost identical to the facts of the case cited supra. Hence the finding of the trial Court that the defendant is not entitled to file an application seeking counter claim is not maintainable after filing of the written statement is not sustainable.

8 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, this Civil Revision Petition is allowed, setting aside the order dated 25.03.2011 passed in I.A.No.851 of 2006 in O.S.No.441 of 2005 on the file of the Court of the Principal Junior Civil Judge, Mancherial, Adilabad District. Consequently, I.A.No.851 of 2006 in O.S.No.441 of 2005 stands allowed. No order as to costs. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 01.02.2017

Kvsn