

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISOIN PETITION No.4259 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, came to be filed assailing the order dated 24.07.2017 passed in I.A.No.70 of 2012 in O.S.No.130 of 2010 by the Senior Civil Judge, Punganur, whereby and whereunder the application made by the first respondent-plaintiff to file rejoinder to the counter claim filed by the defendants, was allowed.

The facts leading to filing of the present revision, are as follows:

The first respondent herein, who is the plaintiff, filed O.S.No.130 of 2010 seeking grant of permanent injunction in respect of suit schedule property. The respondents-defendants filed written statement/counter claim in the suit. After filing of the counter claim, the plaintiff was given an opportunity to file rejoinder by granting several adjournments. However, the plaintiff failed to avail the same. As such, the matter was posted for framing of issues. Subsequent thereto, the plaintiff filed the impugned application seeking permission to file rejoinder, which was allowed. Aggrieved by the same, present revision came to be filed.

Petitioner herein filed a counter affidavit before the Court below resisting the claim of the first respondent contending that inspite of giving sufficient time to file rejoinder, the plaintiff failed to do so. As there was gross negligence on the part of the plaintiff in filing rejoinder, the impugned application cannot be entertained. After hearing both sides, the Court below allowed the request of the plaintiff. Aggrieved by the same, present revision is filed.

Heard the learned counsel for the petitioner. Since this Court is not passing any orders against the respondents herein, there is no necessity to put them on notice and the revision is disposed of at the stage of admission itself.

The short point that arises for consideration of this Court in this revision is 'in view of Order VIII Rule 6 (e) and 6 (g) of CPC, whether the trial Court was right in allowing the impugned application?'

As seen from the record, a counter claim was filed on 22.02.2011, thereafter, though the plaintiff was given sufficient time, failed to file rejoinder. Hence, on 05.01.2012, the trial Court passed an order stating as under: *"rejoinder not filed inspite of giving number of opportunities from 08.07.2011."* Hence, it was deemed that no rejoinder was to be filed and accordingly posted the matter for framing of issues. Thereafter, the present application came to be filed i.e. IA No.70 of 2012 by the plaintiff, requesting the Court to permit him to file a rejoinder to the counter claim.

For better appreciation of the matter, it would be relevant to extract Rule 6 (e) and 6 (g), which are as follows:

Rule 6-E : Default of plaintiff to reply to counter-claim:- *If the plaintiff makes default in putting in a reply to the counter-claim made by the defendant, the Court may pronounce judgment against the plaintiff in relation to the counter-claim made against him, or make such order in relation to the counter-claim as it thinks fit.*

Rule 6-G : Rules relating to written statement to apply:- *The rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counter-claim.*

As seen from the provisions of CPC, strictness which has to be applied for amendment of a plaint or modification of plaint, is not applied for filing written statement. As per Rule 6-G, the rules relating to written statement shall be made applicable to a written statement filed in answer to the counter-claim. Further, Rule 6-E bestows discretionary powers on the Court in entertaining reply to the counter claim.

Coming to the instant case, the trial Court, in the impugned order, observed that in a matter like this where the plaintiff has to admit a portion of the defendants' case and contradict another portion of it, it is always advisable to file subsequent pleading by way of a reply. In such circumstances, the trial Court allowed the request of the petitioner, by using the discretionary powers bestowed in it. Hence, this Court is of the opinion that the order of the trial Court warrants no interference of this Court and the revision is liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed.

Miscellaneous petitions pending in this revision, if any, shall stand closed. No costs.

JUSTICE C. PRAVEEN KUMAR

24.08.2017

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