

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

CIVIL REVISION Petition No.4224 of 2017

Between:

B.Mohammed Haneef.

.. Petitioner\Defendant No.3

AND

S.Mali Basha
& 2 others.

.. Respondents\Defendants 1 & 2

Date of Judgment Pronounced: 12.12.2017

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A.V. SESA SAI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reports/Journals?
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

*** HON'BLE SRI JUSTICE A.V. SESA SAI**

+CIVIL REVISION PETITION No.4224 OF 2017

% Dated 12.12.2017

B.Mohammed Haneef,
S/o B.Akbar Saheb,
R/oTartoor Village,
Jupadu Bunglow Mandal,
Kurnool District.

.. Petitioner\Defendant No.3

AND

\$ S.Mali Basha,
S/o Late Khayum,
Muslim, Occ:Business,
R/o H.No.4-29, Loddipalli Village & Post,
Orvakallu Mandal,
Kurnool District & 2 others.

.. Respondents\Defendants 1 & 2

! Counsel for Petitioner : Sri C.Prakash Reddy.

^Counsel for respondents : Sri M.R.S.Srinivas

<GIST:

> HEAD NOTE:

? Cases referred

THE HON'BLE SRI JUSTICE A.V.SESHA SAI**CIVIL REVISION PETITION No.4224 of 2017****ORDER:**

Defendant No.3, in O.S.No.55 of 2015 on the file of the Senior Civil Judge, Nandikotkur, is the petitioner in the present revision, filed under Article 227 of the Constitution of India.

Heard Sri C.Prakash Reddy, learned counsel for the petitioner-defendant No.3, and Sri M.R.S.Srinivas, learned counsel for the respondents-plaintiffs, apart from perusing the material available before the Court.

The first respondent herein instituted the above mentioned suit, seeking a decree for specific performance of contract of sale. The subsequent purchaser of the schedule property i.e. the third defendant, filed a written statement in the month of November, 2005 and the defendants 1 and 2 also filed common written statement in the month of December, 2015. In the said suit, the third defendant-petitioner herein filed the present I.A.No.114 of 2016, seeking permission of the Court to file additional pleadings in the suit. The Plaintiff-first respondent resisted the said application by way of filing a counter. The learned Senior Civil Judge, by way of the order impugned, dismissed the said application on the ground of maintainability.

According to the learned counsel for the petitioner, the order impugned is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order VIII Rule 9 CPC and that the view taken by the learned Judge is not in accordance with the said provision of law.

On the other hand, it is contended by the learned counsel for the plaintiff-first respondent that there is no error in the impugned order, as such, the questioned order is not amenable for any correction by this Court under Article 227 of the Constitution of India.

In the above background, the issues that emerge for consideration of this Court are:

1. Whether the questioned order, passed by the learned Senior Civil Judge, is in accordance with the provisions of Order VIII Rule 9 CPC?
2. Whether impugned order warrants any interference of this Court under Article 227 of the Constitution of India?

A perusal of the impugned order, in clear and vivid terms, discloses that the learned Senior Civil Judge dismissed the application only on the ground of maintainability. The learned Judge came to the conclusion that the present application is not maintainable under the provisions of Order VIII Rule 9 CPC. In order to adjudicate the issue in the present revision, it may be appropriate to refer to the provisions of Order VIII Rule 9 CPC. Order VIII Rule 9 CPC,

which deals with the subsequent proceedings, reads as under:

"No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claims shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same."

In the order impugned, the learned Judge found that, as per Order VIII Rule 9 CPC, additional pleading can be received only by way of defence to set off or a counter-claim with the leave of the Court but not otherwise. A reading of the above mentioned provision of law shows no such embargo in the said direction for filing an additional written statement. In the considered opinion of this Court, as rightly pointed out by the learned counsel for the petitioner, only in the case of defence to set off or counter-claim, the leave of the Court is necessary. The said provision of law cannot be restricted to the subsequent pleading by way of defence to set off the counter-claim only. If that being so, there is absolutely no necessity to incorporate the second limb of the said provision, according to which, the Court may, at any time, require written statement or additional written statement from any of the parties. Therefore, the reason assigned by the learned

Judge, for dismissing the application, is highly erroneous and contrary to the above said provision of law.

For the aforesaid reasons, the Civil Revision Petition is allowed, setting aside the order, dated 06.07.2017, passed by the learned Senior Civil Judge, Nandikotkur in I.A.No.114 of 2016 in O.S.No.55 of 2015. Consequently, the said I.A.No.114 of 2016 stands restored to file for fresh consideration by the learned Senior Civil Judge on merits.

As a sequel thereto, miscellaneous petitions pending, if any, shall also stand closed. There shall be no order as to costs.

12th December, 2017
L.R.Copy to be marked.
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A.V.SESHA SAI, J

