

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.1127 OF 2014

ORDER:

1 This Civil Revision Petition is filed under Article 227 of the Constitution of India, challenging the order dated 05.02.2014 passed in I.A.No.1348 of 2013 in O.S.No.120 of 2012 on the file of the Court of the Special Sessions Judge for Trial of Cases under SCs / STs (PoA) Act-cum-Additional Sessions Judge at Khammam.

2 Heard both sides.

3 For the sake of convenience, the parties to this revision, will hereinafter, be referred to as they arrayed in the I.A before the trial Court.

4 The petitioner filed O.S.No.120 of 2012 on the file of the Court of the Special Sessions Judge for Trial of Cases under SCs / STs (PoA) Act-cum-Additional Sessions Judge at Khammam against the respondents for recovery of an amount of Rs.5,05,06,795-87 ps. The respondents are contesting the suit by filing written statement. When the matter is coming up for trial, the petitioner filed I.A.No.1348 of 2013 under Order VI Rule 17 CPC r/w Rule 28 of A.P. Civil Rules of Practice & Circular Orders, 1960 for amendment of the plaint. The trial Court after affording reasonable opportunity to both parties, dismissed the said petition. Hence the present revision.

5 The predominant contention of the learned counsel for the petitioner that subsequent to the filing of the suit, the petitioner executed some more work on behalf of the respondents and that aspect was not considered by the trial Court.

6 *Per contra*, the learned counsel for the respondents submitted that the trial Court considered various aspects in right perspective and dismissed the petition.

7 In order to appreciate the rival contentions, it is not out of place to extract Para No.6 of the affidavit filed in support of the petition in I.A.No.1348 of 2013.

"I submit that execution of the total contract work is completed by 25.11.2012. The Final Bill Payment was made on 21.08.2013 without resolving the disputes and without settlement of the claims of plaintiff. The petitioner / plaintiff is entitled for the following amounts from the respondents/ defendants.

Sl.No.	Description of the Claim	Claim Amount Rs.
1	Claim for Refund of Amounts adjusted /recovered from RA Bill No.89, Dated 04/08/2011, from RA Bill Nos.107 to 110, 31 & 18 on 23/06/2012; and from R.A. Bill Nos.111 & 112 on 18/07/2012.	5,05,06,796-00
2	Claim for payment of differential amount on account of adopting the Whole Sale Price indices for arriving the Price Variation.	1,48,45,747-00
3	Claim for payment of amount withheld on Explosives for 7.05 LBCM of O.B.	54,63,151-00
4	Claim for interest of delayed payment of Final Bill amount Rs.2,44,17,719-39.	21,97,595-00
5	Claim for reimbursement of BG Commission paid by plaintiff to receive the Lead Variation Amounts, pending suit.	49,30,862-00
	TOTAL CLAIMS AMOUNT	7,79,44,151-00

8 A perusal of the record reveals that the final bill payment was made on 21.08.2013 i.e. after filing of the suit. It is the case of the petitioner that the final bill was paid without considering the objections raised by it. The disputed amount also includes bank guarantee commission to the tune of Rs.49,30,862-00. It is not the case of the respondents that the final bill was passed with the consent

of the petitioner. It appears there is some dispute between the petitioner and the respondents with regard to the payment of money. It is the case of petitioner that it executed more work for which it is entitled for recovery of further amounts.

9 It is needless to say that the Court can allow the amendment petition to incorporate the subsequent events so as to adjudicate the lis effectively thereby to put quietus to the litigation. If the amendment petition is not allowed, certainly, the petitioner has no other alternative except to file a separate suit, which will lead to multiplicity of litigation. These two aspects were not considered by the trial Court. Even if the amendment petition is allowed, the same may not cause any prejudice to the respondents. The proposed amendment will not fall within the ambit of Proviso to Order VI Rule 17 CPC.

10 Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to set aside the order dated 05.02.2014 passed in I.A.No.1348 of 2013 in O.S.No.120 of 2012 on the file of the Court of the Special Sessions Judge for Trial of Cases under SCs / STs (PoA) Act-cum-Additional Sessions Judge at Khammam.

11 In the result, the Civil Revision Petition is allowed, setting aside the order dated 05.02.2014 passed in I.A.No.1348 of 2013 in O.S.No.120 of 2012 on the file of the Court of the Special Sessions Judge for Trial of Cases under SCs / STs (PoA) Act-cum-Additional Sessions Judge at Khammam, consequently the I.A.no.1348 of 2013 in O.S.No.120 of 2012 stands allowed. The trial Court is hereby

directed to collect additional Court fee. However, allowing of this Civil Revision Petition does not preclude the respondents to avail the remedies available to them under law, including filing of additional written statement. 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: 17.02.2017

Kvsn

