

HON'BLE SRI JUSTICE G. SHYAM PRASAD

CIVIL REVISION PETITION No.6313 OF 2016

ORDER:

1. This Civil Revision Petition is arising out of the order, dated 08.11.2016, in Interlocutory Application No.1167 of 2016 in Appeal Suit No.3 of 2015 on the file of the Principal District Judge, Vizianagaram (For short, 'the appellate Court').

2. Heard Mr. I. Gopal Reddy, learned counsel for the petitioner.

3. The brief facts of the petition are that the petitioner filed I.A. No.1167 of 2016 in A.S. No.3 of 2015, under Order XLI Rule 27 read with Order XXIII Rule 1 read with Section 151 of C.P.C., seeking permission of the Court to withdraw the suit in O.S. No.128 of 2012 on the file of Principal Junior Civil Judge, Vizianagaram (for short, 'the trial Court'), which was filed for a direction that the 2nd and 3rd respondents have no right to receive the rents from the 1st respondent-firm, in respect of plaint schedule property, and for a consequential mandatory injunction directing the 1st respondent-firm to pay periodical rents to him, instead of 2nd and 3rd respondents.

4. Learned counsel for the petitioner submits that the petitioner intends to file a fresh suit for the same cause of action by withdrawing the suit in O.S. No.128 of 2012, which was dismissed by the trial Court. Admittedly, the petitioner filed the suit before the trial Court for a direction that the 2nd and 3rd respondents are not entitled to receive the rents from the 1st respondent and also for a

consequential mandatory injunction, to direct the 1st respondent-firm to pay rents to him, instead of 2nd and 3rd respondents, which was dismissed by the trial Court, after full-fledged trial. Aggrieved thereby, the petitioner preferred the Appeal, wherein he filed the instant petition seeking permission to withdraw the suit with a liberty to file fresh suit with the same cause of action, which was dismissed by the appellate Court, during the pendency of the Appeal.

5. The appellate Court had properly appreciated the rival contentions and came to the just conclusion, and held that the petitioner is not entitled to file a fresh suit with the same cause of action. Since there are no merits in the Civil Revision Petition, this Court is not inclined to interfere with the well reasoned order passed by the appellate Court and, therefore, the Civil Revision Petition is liable to be dismissed.

6. However, if the petitioner intends to prefer a fresh suit, on a fresh cause of action, he is at liberty to do so, by filing a fresh suit. The suit filed by him before the trial Court has already been dismissed and an Appeal is filed, against the dismissal order, and the same is pending before the appellate Court.

7. Accordingly, with the above observation, the Civil Revision Petition is dismissed, at the stage of admission.

8. As a sequel, pending miscellaneous petitions, if any, shall stand dismissed as infructuous. No order as to costs.

G. SHYAM PRASAD, J

Date: 25.01.2017.
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