

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.1209 OF 2011

ORDER:

The present revision petition is filed questioning the order dated 11.02.2011, in I.A.No.963 of 2010 in O.S.No.215 of 2007 passed by the V Additional District Judge (F.T.C), Guntur.

The aforesaid I.A was filed by the plaintiffs under Section 151 C.P.C., to re-open the matter on their side for the purpose of receiving amendment petition filed under Order 6 Rule 17 CPC along with the said I.A at the stage of arguments on their side. The grounds raised in the affidavit and also the counter averments controverting the grounds raised in the affidavit have been narrated by the Court below in paragraphs 2 and 3 of the order under challenge.

Having formulated the point for consideration in paragraph 6 to the effect that whether the I.A filed by the plaintiffs to re-open the matter on their side can be allowed, the Court below, referring to the stage at which the present I.A was filed and the grounds agitated in the affidavit filed along with the petition for amendment under Order 6 Rule 17 CPC and also placing reliance on the decision of this Court in **Mattaparthi Satyanarayana v. Bhavana Seshagiri Rao**¹ and the decision of the Hon'ble Supreme Court in **Vidyabai and others v.**

¹ 2005 (3) ALD 632

Padmalatha and another², opined that such an application ought to have been filed at the stage earlier to the stage at which the suit was coming and dealing with certain averments made in the affidavit filed in support of the petition under Order 6 Rule 17 CPC, which was not assigned any number, recorded a finding that the petition was not maintainable either on law or on facts and dismissed the re-open petition. Of course, the Court below has made an observation that the matter was already re-opened and an opportunity to the petitioners/plaintiffs to submit their reply arguments was kept alive.

Heard Sri G.Pedda Babu, learned counsel for the petitioners, and Sri K.Suresh Reddy, learned counsel for the respondents.

Sri K.Suresh Reddy, learned counsel for the respondents, fairly admits that the Court below ought not to have recorded any findings in relation to the petition filed under Order 6 Rule 17 CPC without registering it and giving an opportunity to both sides to tender arguments.

It is true, the Court below ought to have registered the petition filed under Order 6 Rule 17 CPC and decided the same along with the present I.A., in which the order under challenge is passed. However, without doing so and without numbering the petition filed under Order 6 Rule 17 CPC, the Court below recorded certain findings in the order under challenge based on the petition filed under Order 6

² 2009 SAR (Civil), 149 SC

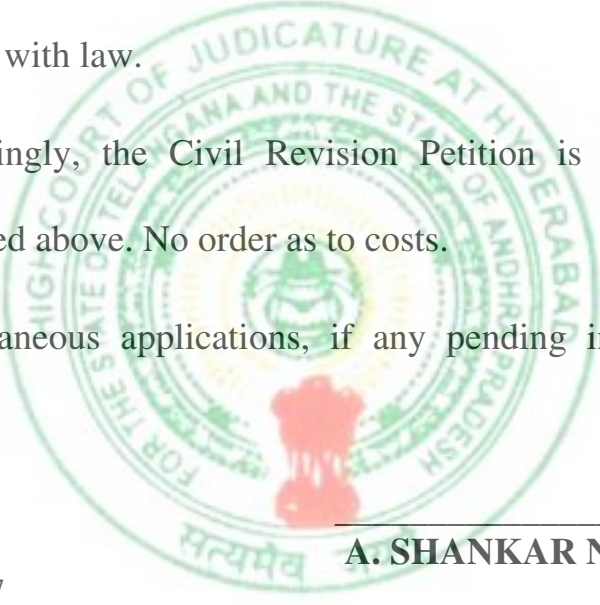
Rule 17 CPC and this makes the order under challenge unsustainable and, therefore, the order under challenge is set aside.

Since the learned counsel for both sides represent that the suit is still pending and the narration of the facts in the order under challenge reveals that the present I.A was filed when the suit was at the stage of tendering reply arguments by the petitioners/plaintiffs, the Court below is directed to number the petition filed under Order 6 Rule 17 CPC and dispose of the same along with the present I.A i.e., I.A.No.963 of 2016, which is restored on the file of the Court below, in accordance with law.

Accordingly, the Civil Revision Petition is allowed to the extent indicated above. No order as to costs.

Miscellaneous applications, if any pending in this revision, stand closed.

06th January, 2017
v v

A. SHANKAR NARAYANA, J