

THE HON'BLE DR JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION NO.4913 OF 2013

ORDER:

Heard counsel for petitioners and also the counsel for respondent.

Perused grounds urged in the revision petition and the impugned order of the lower Court.

The petitioners are the defendants in the suit O.S.No.14 of 2011 pending on the file of the Additional District Judge at Khammam-cum-Family Court. This is a suit filed pursuant to the sale agreement instead for specific performance of the contract for sale only for the relief of recovery of the advance paid under the written agreement with interest. Pending the suit, the defendants filed application in I.A.No.883 of 2012 saying the very frame of the suit is bad, there is no cause of action, the claim is also barred by law and sought for rejection of the plaint as per Order VII Rule 1 (a) and (d) respectively of the Code of Civil Procedure. The trial Court on 29.10.2013 dismissed the same.

It is impugning the same present revision is filed. The counsel for petitioners contend that the claim is barred by law and there is no cause of action in subsistence and the dismissal order is baseless and is liable to be set aside, whereas the counsel for the respondent-plaintiff supported the impugned dismissal order of the lower Court saying there are no grounds to interfere with the impugned dismissal/rejection order.

It is the settled law that even cause of action not specifically stated in any particular para of plaint, if it discloses from reading of the plaint of the bundle of essential facts to the entitlement of

claim, it is suffice. It is only when there discloses no cause of action plaintiff can be rejected. Even for the return of money covered by the sale agreement sought, it is sustainable and whether barred by time or not is a matter for adjudication, more particularly for nothing to reject from the plaintiff averments sustaining the claim. Once such is the case, any defence is left open in the written statement to raise and to seek, if necessary, to decide one of the necessary issues as a preliminary issue on any of the aspects. But for that concession there is nothing to set aside the dismissal order.

Accordingly, the Civil Revision Petition is disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(Dr. B.SIVA SANKARA RAO, J)

1st November 2017
RRB

