

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.3233 OF 2017

ORDER:

Though, the matter is coming up for admission, the same is being disposed of as it is opined that no notice is required to be ordered on respondent.

2. In an interlocutory application (I.A. No.34 of 2016) filed under Order XIV Rule 5 (1) of Civil Procedure Code (for short, 'the Code') in O.S.No.11 of 2015 on the file of Junior Civil Judge, Yellareddy, Nizamabad District, the petitioner/defendant sought to frame an additional issue, thus, "Whether the plaintiff is holding money lending license".

3. The learned Junior Civil Judge, Yellareddy, Nizamabad District, in I.A.No.34 of 2016 in O.S.No.11 of 2015, having received counter from the opposite party, formulated the point for consideration and answered it in paragraph Nos.5 and 6 thus:

"5. Point:-

The contention of the petitioner/defendant is that, he had denied in his written statement filed in the above case "that the plaintiff is not a money lender, as such the Money Lender's Act is not applicable to the plaintiff". Hence praying the court to frame an additional issue i.e., "whether the plaintiff is holding money lending license" in the ends of justice and equity.

Whereas the respondent/plaintiff contention is that, as already the respondent herein pleaded in his plaint that, he is not a money lender and the Money Lender's Act is not application to the plaintiff as such, the framing of issue is not necessary and the suit is coming for plaintiff evidence. Hence, prays the court to dismiss the present application.

6. On perusal of the entire material available, it is pertinent to note that after giving the chance to both the parties with regard to the filing of draft issues, this court framed the issues on 20.11.2015 and the suit is posted for

plaintiff evidence. At this stage the above mentioned application has been filed by the petitioner/defendant for framing of additional issue which may cause delay in the suit proceedings.”

4. Heard Sri Akkam Eshwar, the learned counsel for the revision petitioner/defendant.

5. He would initially submit that when the allegation is made in the plaint and there has been denial in the written statement, necessarily, an issue would arise and that was not done by the Court below and, hence, it necessitated to move an application of the nature so moved, and, therefore, urges the Court to settle an additional issue. His further argument is that the order now challenged suffers from want of reasons.

6. Service of notice is not ordered for the reason that the order passed is not supported by any reasons and intended to remit the Revision petition to the Court below directing to afford an opportunity to both sides to tender their arguments again and in the light of pleadings to arrive at a just conclusion whether or not an issue would arise, which is now sought to be settled. The learned Junior Civil Judge ought to have given thought to the provisions of Order XIV of the Code. It is not clear, whether the parties did file any draft issues, and whether the Court heard on draft issues and then only settled the issues for trial. Paragraph No.6 afore extracted portion would show that the issues were already settled for trial on 20.11.2015 and when the suit was coming up for plaintiff's evidence the said application

was filed for framing of an additional issue and that would cause delay in disposal of suit. That alone appears to be the reason in dismissing the petition. Certainly, such approach is not correct. In fact, when there is material allegation in the plaint and specific denial therefor in the written statement, the same would give rise to frame an issue thereon. The very spirit of Order XIV of the Code is, somehow, lost sight of. Therefore, this is a case where the order is liable to be set aside and to remit the same to the Court below directing to give an opportunity to both sides to rehear and decide the application in accordance with provisions of Order XIV of the Code.

7. With the above direction, Civil Revision Petition is allowed.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Second Appeal shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 24.07.2017
gbs