

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 1510 of 2017

ORDER:

1) Aggrieved by the order dated 09.09.2016 in I.A. 234/15 in OS.116/10 on the file of the X Additional District Judge, Tirupati, wherein an application filed under Order 8 Rules 8 and 9 and Section 151 of the Code of Civil Procedure praying to receive the additional written statement, was rejected, the present revision came to be filed under Article 227 of the Constitution of India.

2) The petitioner herein is the defendant and the respondent herein is the plaintiff before the trial Court. For the sake of convenience, the parties will hereinafter be referred to as arrayed in the suit.

3) The brief facts of the case are as under:-

Plaintiff filed the suit basing on a promissory note dt:15.09.2008 executed by the defendant in favour of the plaintiff, for recovery of Rs.11,00,000/-. But the defendant denied the execution of the said promissory note and passing of consideration. It is the case of the defendant that the said suit pronote is a forged document, since the signature on the pronote is different from his natural signature. It is stated that since the defendant secured the contemporaneous documents containing the signature, filed an

application under Order VIII Rules 8 and 9 and Section 151 of the C.P.C., seeking permission to file additional written statement.

4) A counter came to be filed by the plaintiff disputing the averments made in the affidavit filed in support of the said I.A. The record discloses that earlier the defendant filed I.A.170/13 under Order VI Rule 17 C.P.C., to amend the plea in his written statement. After considering the rival arguments advanced, the said I.A was dismissed. Against which, the C.R.P.No.2806 of 2014 was filed, which was also dismissed. Thereafter, the defendant came with another petition under Order VIII Rule 9 of C.P.C., with the very same relief i.e., to receive the additional written statement.

5) Heard Sri P.Jagadish Chandra Prasad, learned counsel for the petitioner and Sri N.Bharath Babu, learned counsel for the respondent.

6) It is urged by the learned counsel for the petitioner that the present petition, which is filed under Order VIII Rule 9 CPC is different from one filed under Order VI Rule 17 CPC and there is no bar to file such an application.

7) The same is opposed by the learned counsel for the respondent stating that what could not achieved in the earlier round of litigation is sought to be achieved by filing a different application under a different provision of law but for the same relief. Since the earlier

application sought for the very same relief was rejected by this Hon'ble Court, the counsel for the respondent herein states that there are no grounds to interfere with the same.

8) The question now would be "Whether dismissal of an application under Order VI Rule 17 CPC seeking amendment of written statement is a bar for filing an application under Order VIII Rule 9 CPC for filing additional written statement?"

9) The trial court after considering facts and circumstances held that though under Order VIII Rule 9 and Order VI and Rule 17 are different, but in the light of the proceedings that took place under Order VI Rule 17 of C.P.C., and orders passed by the Hon'ble High Court, denying the reason assigned to consider the pleadings to be amended or plea taken, the self-same plea of reason of filing the petition to receive additional written statement do not sustain. Thus, in this case though Order VIII Rule 9 permit a valid reason to file additional written statement, but the reason assigned to file additional written statement was denied by the High Court in previous proceedings.

10) Further, as seen from the affidavits filed in support of the said I.As., the relief sought for in both the I.As., are one and the same. Even though the provision of law is different, the defendant is seeking the same relief under two different provisions of law. It is to

be noted that the principles of *res judicata* also apply to Interlocutory Applications.

11) According to Section 11 of the C.P.C., "No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.". The order passed by this Court in C.R.P.No.2806 of 2014, which arose out of I.A.170/13 in O.S.No.116 of 2010 on the file of the X Additional District Judge, Tirupati, has become final as the same is not challenged before the Higher Court. Since the relief claimed herein is already rejected, the order under challenge warrants no interference. Hence, I find no merits to allow the C.R.P. and the same is liable to be dismissed.

12) Accordingly, the Civil Revision Petition is dismissed. No costs. Miscellaneous Petitions pending if any in this C.R.P., shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:18.04.2017

GM