

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 5006 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the Order 02.09.2016 in I.A.No.347 of 2015 in O.S.No.06 of 2011 passed by II Additional District Judge, East Godavari at Amalapuram, permitting the petitioner/plaintiff therein to file subsequent pleadings under Order 8 Rule 9 CPC annexed to the petition.

The only dispute is that the respondent No.1 herein/plaintiff raised several subsequent pleas, which are not explanatory to the written statement and it is beyond the scope of Order 8 Rule 9 CPC.

Sri S. Subba Reddy, the learned counsel for the revision petitioner/Defendant Nos. 1 and 2 drawn the attention of this Court to the contents of para Nos. 4 and 16, which contains the incident subsequent to filing of the suit which are not in the nature of explanatory to the written statement.

P. Rajesh, learned counsel for the respondent herein/plaintiff, fairly conceded that these paras pertains to the subsequent events and not in the nature of explanatory and drawn attention of this Court to a judgment reported in

*S. Venkataram Reddy and others v S. Vinod Reddy and others*¹, wherein this Court in para No.6 of the Judgment, held as follows:

“ we have already noticed that the power under Order 8 Rule 9 CPC is controlled by Order 6 Rule 7 CPC. The crucial test is if the subsequent pleading is in the nature of reply to the written statement but not a departure from the previous pleading leave to reply which is described as subsequent pleading or rejoinder can be permitted and the Court in its direction can grant leave to file such pleading. But it is necessary also to bear in mind that the subsequent pleading must essentially one of reply in its character. The subsequent pleading should not raise a new ground and it should not be inconsistent with the original pleadings. The necessity to permit the plaintiff to file a reply would arise normally when the defendant confess or admits the plaintiff's case but wants to avoid its effect by alleging the fresh facts which afford answer to it. In such case, it is just and necessary to permit the plaintiffs to plead in his reply by filing a subsequent pleading either by denying the facts or admitting them in part and alleging other facts which avoid that effect”.

If the principle laid down in the above judgment is applied to the facts of the present case, the pleas raised in para Nos. 4 and 16 are beyond the scope of Order 8 Rule 9 CPC. Therefore, the Order of the trial Court is modified to the extent of deleting para Nos. 4 and 16 in the rejoinder as it is beyond the principle laid down in the judgment. However, it is left open to the petitioner to take appropriate steps to introduce new facts, subject to permissibility under law.

With the above observation, this Civil Revision Petition is disposed of.

¹ 1986(2) ALT 368

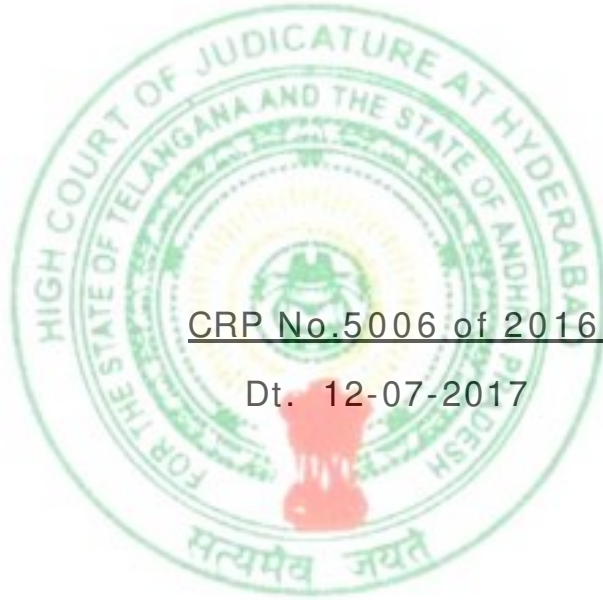
As a sequel, miscellaneous petitions, if any, pending
in this case, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 12-07-2017.
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