

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5818 of 2016

ORDER:

1) Assailing the order, dated 02.11.2016 passed in I.A.No.673 of 2016 in O.S.No.503 of 2013 on the file of the Principal Senior Civil Judge, Chittoor, wherein an application filed under Section 151 of C.P.C. to receive the additional written statement was rejected, petitioner/defendant preferred the present Civil Revision Petition.

2) The facts in issue are as under:

The respondent herein filed O.S.No.503 of 2013 against the petitioner for recovery of money basing on a promissory note. Pending suit, he filed I.A.No.93 of 2016 seeking a direction to the respondent to produce the original chit subscription list. The said I.A. was dismissed. Aggrieved by the same, the petitioner herein preferred C.R.P.No.3428 of 2016 before this Court. By an order, dated 22.07.2016, this Court while disposing of the revision gave liberty to the petitioner to agitate all the grounds raised in the original suit, in which event he was directed to be dealt with, in accordance with law. Hence, he filed an application to receive additional written statement. The respondent/plaintiff filed counter stating that the petitioner was already informed that the chit subscriber book was not in the custody of the respondent and as such there is no merit in the application. It was also stated that

only to drag on the proceedings the present petition was filed and the same is liable to be dismissed.

3) After considering the rival submissions made, the trial Court dismissed the application. Challenging the same the present Civil Revision Petition is filed.

4) The point that arises for consideration is whether the learned trial Judge was correct in dismissing the application filed by the petitioner to receive additional written statement.

5) Order VIII Rule 9 of C.P.C. permits the defendant to file subsequent pleadings after getting leave of the court. Further, for better appreciation, it would be necessary to extract Order VIII Rule 9 of C.P.C. which is as under:

“Order VIII, Rule-9 of C.P.C.: Subsequent pleadings: No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court things fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.”

6) Order VIII Rule 9 of C.P.C. deals with subsequent pleadings. It has imposed bar on the parties from filing pleadings subsequent to filing of the written statement other than by way of defence to set-off or counter-claim except by leave of the Court. It is no doubt true that this provision does not *per se* stipulate any limitations on the power of the Court to allow the parties to file subsequent pleadings. However, the Courts have interpreted this

provision by reading certain limitations into the same, obviously to ensure that the scope of the proceedings is not unduly enlarged and the suit proceedings are not dragged on under the guise of filing subsequent pleadings.

7) In *P.A. Jayalakshmi v. H. Saradha and others*¹, wherein the Apex Court while dealing with Order VIII Rule 9 and Order VI Rule 17 of C.P.C. held that the courts should be liberal in allowing applications for leave to amend pleadings but the Courts must bear in mind the statutory limitations brought about by reason of C.P.C. (Amendment) Acts and the proviso appended to Order VI Rule 17 of C.P.C.

8) As seen from the record, the respondent/plaintiff in his counter stated that chit subscriber book was not in his custody. The petitioner admitted his signature on Ex.A1-promissory note. At the stage of arguments the defendant filed the present petition stating that while disposing of the C.R.P. this Court giving liberty to him to agitate all the grounds raised in the original suit. Admittedly the document chit subscriber book is not in the custody of the plaintiff and the suit is posted for arguments of the defendant. In view of the earlier orders passed by this Court and as the suit is posted for arguments, I see no reasons to interfere with the order passed by the trial Court.

9) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

¹ (2009) 14 SCC 525

10) Miscellaneous Petitions, if any, pending in this Civil Revision
Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

06.02.2017
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