

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.4369 OF 2016

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India challenging the order dated 09.6.2014 in I.A. No.226 of 2014 in O.S. No.894 of 2014 on the file of the Court of III Junior Civil Judge, City Civil Court, Hyderabad.

2. The facts leading to filing of the present revision petition are as follows: The respondent filed O.S. No.894 of 2014 against the petitioner on the file of the Court of III Junior Civil Judge, City Civil Court, Hyderabad, seeking perpetual injunction restraining the petitioner from misusing/presenting cheques bearing Nos.463376, 463377 and 463378 issued by respondent in favour of the petitioner drawn on State Bank of India, Chirag Ali Lane, Abids Branch, Hyderabad. After receipt of the summons in the suit, the petitioner made appearance before the trial court and filed I.A. No.226 of 2014 under Order VII Rule 11 of CPC for rejection of the plaint. It is the case of the petitioner that the cheque bearing No.463376 issued by the respondent in favour of the petitioner was dishonoured on the ground that the account was closed. Thereafter the petitioner got issued notice to respondent directing him to pay the amount covered under cheque No.463376 within 15 days failing which legal consequences will follow. Even after receipt of the notice, the respondent did not choose either to pay the amount or to issue any reply. Having no other alternative, the petitioner filed C.C. No.765 of 2014 against the respondent on the file of the Court of Judicial First Class Magistrate, Karnal, under Section 138

of Negotiable Instruments Act. Meanwhile, the petitioner filed the suit. The trial court, after having thoughtful consideration to the material available on record, dismissed the I.A. Hence, the revision.

3. The contention of the learned counsel for the petitioner is two fold: (1) the trial court has not considered the scope of Order VII Rule 11 of CPC and Section 41 of the Specific Relief Act and dismissed the I.A. on erroneous grounds; and (2) the order impugned in this revision is not sustainable either on facts or in law. ***Per contra***, learned counsel for the respondent submitted that the relief sought by the petitioner falls outside the purview of Order VII Rule 11 of CPC and Section 41 of the S.R. Act. He further submitted that there is no illegality, irregularity or impropriety in the order passed by the trial, which warrants interference of this court.

4. The court can reject the **plaint** while exercising discretionary power vested in it under Order VII Rule 11 of CPC, if there is no cause of action for filing the suit, or filing of the suit itself is prohibited by any other law for the time being in force. I have carefully scanned the affidavit filed in support of I.A. No.226 of 2014. It is not the case of the petitioner that there is no cause of action for filing the suit. The averments made in the affidavit falls outside the purview of Clauses (a), (b) and (c) of Rule 11 of Order VII of CPC.

5. The predominant contention of learned counsel for the petitioner is that the suit is not maintainable in view of Section 41

of the Specific Relief Act. Section 41 of the Specific Relief Act deals with the circumstances where an injunction cannot be granted by the court. Whether the respondent is entitled for the relief of perpetual injunction or not has to be decided after fullfledged trial. It is an admitted fact that the petitioner did not file written statement before the trial court taking a specific plea that the suit itself is not maintainable on certain grounds. There is no bar under law to file a suit restraining an individual to misuse the cheque. The learned counsel for the petitioner has not brought to the notice of this court a specific provision or a law which prohibits filing of a suit for perpetual injunction by the respondent. By any stretch of imagination, it can be presumed that the present suit falls within the purview of Clause (d) of Rule 11 of Order VII of CPC. Section 41 of the Specific Relief Act has nothing to do with rejection of the plaint is concerned. The trial court has considered various aspects in right perspective and dismissed I.A. No.226 of 2014. I am fully endorsing the findings recorded by the trial court. There is no illegality, irregularity or impropriety in the order passed by the trial court, which warrants interference of this court, while exercising the jurisdiction under Article 227 of the Constitution of India. The civil revision petition lacks merits and bona fides.

6. Hence, the civil revision petition is dismissed. Miscellaneous petitions, if any pending in this petition, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 22.3.2017
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