

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.7140 of 2017

ORDER:

The defendant in O.S.No.83 of 2013 on the file of the Court of the I Additional District Judge, Kurnool, is the petitioner in the present revision filed under Article 227 of the Constitution of India.

Heard learned counsel for the petitioner and perused the material available on record.

The respondent herein instituted the above mentioned suit for recovery of money on the foot of pronotes said to have been executed by the petitioner. The petitioner herein filed I.A.No.240 of 2014 under the provisions of Order VII Rule 11 read with Section 151 CPC, praying the Court below to reject the plaint under Order VII Rule 11 of Civil Procedure Code. The plaintiff/respondent herein contested and opposed the said application on the ground of maintainability of the same under the provisions of Order VII Rule 11 CPC. The learned Judge by way of the order under challenge dismissed the said application. Hence, the present revision.

Learned counsel for the petitioner contends that the order passed by the lower Court is erroneous and contrary to law. It is further submitted by the learned counsel that being an employee of the Central Government, the plaintiff cannot carry on the business of the money lending and on the same ground alone, the plaint is liable to be rejected.

The power of the Court conferred under the provisions of Order VII Rule 11 CPC is required to be exercised with great amount of care, caution and circumspection. It is also a settled

proposition of law that at the time of consideration of the application filed under Order VII Rule 11 CPC, the averments in the plaint alone are required to be taken into consideration, but not the defence of the defendant. In the instant suit, the case of the defendant/petitioner herein is that since the plaintiff is a Central Government employee, he cannot carry on the business of money lending, as such, the suit is not maintainable.

A perusal of the order clearly discloses that the Court below, in categorical terms, observed that it is for the defendant to prove that the plaintiff is a money lender and the same is a factual aspect. As correctly observed by the Court below, it is for the defendant to prove the same after full pledged trial of the suit and the said aspect cannot be decided at this stage. Therefore, this Court does not find any valid reason to meddle with the impugned order.

Accordingly, the Civil Revision Petition is dismissed.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

A.V. SESA SAI, J

21st December, 2017.
ssp