

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 79 of 2018

ORDER:

- 1) Assailing the order dated 25.11.2017, passed in I.A.No.551 of 2017 in O.S.No.75 of 2015 on the file of the II Additional Senior Civil Judge, Kakinada, the present Civil Revision Petition is filed under Article 227 of the constitution of India, wherein and whereunder an application filed under Order XIV Rule 5 and Section 151 C.P.C. to settle additional issues, was dismissed.
- 2) For the sake of convenience, the parties hereinafter will be referred to as arrayed in the suit.
- 3) The plaintiff who is the petitioner herein filed O.S.No.75 of 2015 for recovery of Rs.5,79,354/- with subsequent interest. Pending the suit, the plaintiff filed I.A.No.551 of 2017 to frame additional issues. The defendant filed counter contending that the Court already framed issue Nos.1 to 3 which are comprehensive in covering the entire case and controversy of both the parties. It is also stated that there is no need to frame additional issues.
- 4) After considering the rival submissions made, the trial Court dismissed the petition with costs. Challenging the same, the present revision is filed.
- 5) Learned counsel for the petitioner submits that the trial Court framed only three issues basing on the plaint and the said

issues do not cover the defence taken by the defendant in her written statement.

6) Learned counsel for the defendant would submit that issues were framed on 15.06.2015 and the suit is posted for further cross examination of DW1, and as such framing of additional issues at this stage would not arise. The petitioner did not choose to file draft issues and did not choose to raise any objection with regard to framing of issues before commencement of trial. It is also urged that only to drag on the suit proceedings, the petitioner filed the present application.

7) Order XIV of code of Civil Procedure, 1908 which deals with settlement of issues and Rule, reads as under:

"Framing of issues".

(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds:

(a) issues of fact.

(b) issues of law.

(5) At the first hearing of the suit the court shall, after reading the plaint and the written statement, if any, and after examination under Rule 2 of Order X and after hearing the parties or their pleaders ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the court to frame and record issues where the defendant at the first hearing of the makes no defence."

8) As seen from the material on record, the issues framed before the trial Court are as under:

1) Whether the suit promissory note is true valid and binding on the defendant?"

2) Whether the plaintiff is entitled for the suit amount as prayed for?

3) To what relief?

9) The proposed additional issues are as under:

a) Whether the defendant never visited Kakinada in the month of July, 2014 and that she was in Narasaraopet only?

b) Whether the defendant was not in Kakinada on 20.07.2014?

c) Whether there is any connection or binding effect between the loan said to be borrowed by the defendant on 05.04.2012 from one Sri Nagarjuna MACT Society and the present suit loan transaction as alleged in the written statement of the defendant?

- d) Whether the case of the defendant in the written statement is true that Mr. Bhanu, S/o. Atchyutharamayya retained one blank pronote containing the signature of the defendant?
- e) Why the defendant made part payment of Rs.50,000/- as per the contention of the defendant in her written statement when her case is that she has not borrowed the suit promissory note?
- f) Whether the suit promissory note is a fabricated document as alleged by the defendant in her written statement?
- 10) From the above, it is clear that Issue No.1 framed by the trial Court is sufficient and the proposed additional issues are covered by the said issue as the suit is based on the promissory note dated 20.07.2014. The Court can examine the validity of the said pronote while passing judgment.
- 11) Issue identical to the case on hand came up for consideration before the Apex Court in *Modi Spinning and Weaving Mills Co. v. Ladha Ram and Company*¹, wherein the Apex Court held as under:

"The power to frame additional issues is a discretionary power of the trial court. Additional issues may be framed if the court thinks necessary for determining the matter in controversy. By an order refusing to frame additional issues or allowing an application for framing of additional issues no right or obligation of the parties in controversy is adjudicated upon by the court. It is a matter only of procedure. The Court, after examining the pleadings and

¹ AIR 1978 All 260

other material on record as required under Rule 3, may frame the issues. Since no right or obligation of a party is determined by an order refusing to frame additional issues such an order cannot be held to be deciding a case between the parties and would not come within the ambit of the expression "case which has been decided". Similar would be the position in regard to an order by which additional issues are framed or amended."

12) Having regard to the judgment of the Supreme Court referred to above and taking into consideration the issues that are already framed, this Court is of the view that the issues already settled are sufficient for the purpose of deciding the questions in controversy between the parties in the suit. Hence, the revision sans merit and the same is liable to be dismissed.

13) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

27.03.2018

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