

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Revision Petition No.452 of 2016

ORDER:

Heard Sri T. Surya Sathish, learned counsel for the petitioners/defendants.

2. The present Civil Revision Petition is filed under Article 227 of the Constitution of India questioning the order dated 5.1.2016 in I.A. No.31 of 2015 in O.S. No.382 of 2009 on the file of XII-Additional Senior Civil Judge (Fast Track Court), City Civil Court, Secunderabad. The aforesaid Interlocutory Application was filed to introduce set off on the ground that due to oversight the claim of set off was not set up or taken out in the written statement when it was originally filed, and, therefore, sought to amend the written statement to introduce the plea of 'set off'.

3. The respondents/plaintiffs resisted the request by filing a detailed counter mentioning that in fact the suit was disposed of and the petitioners/defendants carried the matter to the Appellate Court, and the Appellate Court gave specific direction remitting the matter for conducting re-trial. The learned trial Judge referring to the direction of the Appellate Court, which was to the extent of giving an opportunity to both sides to participate in the enquiry afresh, rejected the request dismissing the application as the petitioners cannot raise such a plea, which amounts to deviating the direction given by the appellate Court.

4. Learned counsel for the petitioners would submit that when once the matter is remitted to the trial Court for fresh enquiry, there cannot be any embargo to introduce amendment to the written statement and since the petitioners, somehow, inadvertently omitted to take such a plea earlier, they intend to introduce the plea of set off now, by amending the written statement.

5. Though, the respondents entered appearance there was no representation. After the arguments tendered by the learned counsel for the petitioners on 22.3.2018, though, four adjournments were granted to afford an opportunity, but still, there is no representation for the respondents.

6. Now, the short point that arises for consideration is, whether at this stage the request to amend the written statement to introduce the plea of 'set off' can be acceded to?

7. The suit was filed in the year 2009 and the written statement was filed in the month of November, 2009.

8. The said suit was decreed with costs directing the defendants to vacate and deliver vacant possession of leasehold to the plaintiffs within three months and in default, the plaintiffs were entitled to obtain possession of the plaint schedule property through process of law. The trial Court also given further direction to the defendants to pay Rs.48,000/- towards arrears of rents with interest at

6% per annum from the date of suit till the date of realization and certain other directions were also given.

9. When the said judgment and decree were challenged, the I-Additional Chief Judge, City Civil Court, Secunderabad, by his judgment dated 18.03.2015 in A.S. No.77 of 2013 allowed the appeal setting aside the decree and judgment of the trial Court and also set aside the orders dated 14.3.2013 in I.A. Nos.105 and 106 of 2012 and remanded the case to the trial Court directing to give opportunity to both sides to participate in the enquiry afresh and observed that in the event of non-compliance of the directions given by this Court in C.R.P. No.4502 of 2012 within stipulated time, the defence of the defendant shall be struck off as contemplated under Order 15-A of C.P.C. and it shall be open to the respondents/plaintiffs to proceed with the case in accordance with law.

10. The order passed by this Court in the aforesaid Civil Revision Petition (CRP. No.4502 of 2012) is not filed for perusal.

11. Learned counsel for the petitioners relied on a ruling of the Apex Court in **Vijay Prakash Jarath v. Tej Prakash Jarath**¹ putting forth the counter-claim.

12. The fact situation occurring therein is not identical to the fact situation herein for the reason in the present case the suit was originally disposed of and even the appeal filed was also disposed of and on remand proceedings are now pending. Even otherwise, inadvertence is not a ground to permit the petitioners/ defendants,

¹ 2016 (3) ALD 114 (SC)

more particularly, the plea of set off without mentioning the relevant details and as to how the claim 'set off' is within limitation.

13. The plea now raised to introduce the amendment to plead set off in the original written statement, certainly, cannot be acceded to on the mere fact that the petitioners, somehow, by oversight did not plead set off in the written statement originally filed. Absolutely, there is no ground at all to accede to the request on the mere ground that the matter was remitted to the trial Court for enquiry afresh and the direction given by the Appellate Court in C.R.P. No.4502 of 2012 shall be observed by the petitioners herein and in case of default the trial Court was required to struck off the defence. Thus, not only before judgment was pronounced by the trial Court earlier but also when the appeal was pending before the appellate Court, no attempt at all was made and only belatedly plea of 'set off' is sought to be introduced. When the suit relates to the year 2009 and written statement was filed in the year 2009, question of bar of limitation automatically works out, and, therefore, there is no merit in the present Civil Revision Petition.

14. Accordingly, the Civil Revision Petition is dismissed. The parties shall bear their own costs.

As a sequel thereto, miscellaneous petitions if any pending in the Civil Revision Petition shall stand closed.

A.SHANKAR NARAYANA

Dt. 18.04.2018
gbs