

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.776 of 2018

ORDER:

1 Challenge in this Civil Revision Petition, filed under Article 227 of the Constitution of India, is to the order dated 16.11.2017 passed in I.A.No.304 of 2014 in O.S.No.266 of 2011 on the file of the Court of the V Additional District Judge, Ongole.

2 Heard the learned counsel for both parties and perused the record.

3 A perusal of the record reveals that the petitioner filed O.S.No.266 of 2011 on the file of the Court of the V Additional District Judge, Ongole against the respondent Nos.2 to 6 herein for damages in the shape of interest to the tune of Rs.6,87,500/-. During the pendency of the suit, the first respondent herein filed I.A.No.304 of 2014 under Order I Rule 10 CPC to implead him as one of the plaintiffs in the suit. After affording reasonable opportunity to both parties, the trial court allowed the petition. Hence the present Civil Revision Petition.

4 The point for consideration is whether there is any illegality, irregularity or impropriety in the impugned order warranting interference of this Court?

5 In order to appreciate the rival contentions, it is not out of place to extract the impugned order hereunder:

“Counter not filed from 24.09.2014 onwards. Hence petition is allowed.”

6 The trial court passed the impugned order on 16.11.2017. The learned counsel for the petitioner submitted that the petitioner filed

counter on 18.3.2016. To substantiate the same, the learned counsel for the petitioner filed certified copy of the counter. A perusal of the record reveals that the petitioner filed the counter on 18.3.2016. The finding of the court below that the petitioner has not filed counter from 24.09.2014 is factually incorrect. Even assuming but not conceding that the petitioner has not filed the counter, the trial court ought to have passed order on merits. It is needless to say that the court has to pass speaking order while disposing of the interlocutory petitions. The present petition is filed under Order I Rule 10 CPC. Before allowing of such petitions, the court has to record a specific finding that whether the proposed party is a proper and necessary party to the suit or not. The trial court has not given finding whether the proposed party is a necessary and proper party, without whose presence, the suit cannot be adjudicated effectively. In view of the slipshod order passed by the trial court, this court is of the considered view that this is a fit case to set aside the impugned order and matter be remanded to the trial court for fresh disposal.

7 In the result, the Civil Revision Petition is allowed, setting aside the order dated 16.11.2017 passed in I.A.No.304 of 2014 in O.S.No.266 of 2011 on the file of the Court of the V Additional District Judge, Ongole. The learned V Additional District Judge, Ongole is hereby directed to dispose of I.A.No.304 of 2014 afresh, by way of speaking order, after taking into consideration the counter filed by the petitioner. No order as to costs. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 01.10.2018

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