

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.886 OF 2018

ORDER:

This revision is filed under Article 227 of the Constitution of India questioning the order dated 06.09.2017 in I.A.No.931 of 2017 in O.S.No.158 of 2014 passed by the XXVII Additional Chief Judge, City Civil Court, Secunderabad, whereby the petition filed under Order VII Rule 11(a) and (d) C.P.C. to reject the plaint at the threshold, on the ground that the plaint does not disclose cause of action and that the claim of the plaintiff is hopelessly barred by limitation was dismissed.

The respondent disputed the contentions raised by the petitioners by filing elaborate counter before the Court below and prayed for dismissal of the petition.

However, the said petition was dismissed by the Court below considering judgments of the Apex Court in **N.V.Srinivasa Murthy and others v Mariyamma (dead) by proposed LRS and others¹** and **Vaish Aggarwal Panchayat v Inder Kumar and others²** relying on the reference made to the Larger Bench that the question of law is barred by limitation and dismissed the petition.

After arguing the matter for a while, learned counsel for the petitioners brought to the notice of this Court that an issue was framed with regard to the limitation and unless such question is decided, the Court cannot proceed with the trial of the suit and requested to grant leave to file petition under Order XIV Rule 2(2) C.P.C.

¹ (2005)5 SCC 548

² 2015 SCC 751

According to Order XIV Rule(2)(2) C.P.C., where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to the jurisdiction of the Court, or a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

Thus, a preliminary issue, if it is purely a question of law, can be decided before deciding the other issues. Therefore, opportunity is afforded to the petitioners to file appropriate application under Order XIV Rule 2(2) C.P.C. dismissing the petition without touching the merits of the case, leaving it open to the petitioners to raise all pleas regarding limitation, in an application filed under Order XIV Rule 2(2) C.P.C.

With the above direction, the revision petition is disposed of. There shall be no order as to costs.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M. SATYANARAYANA MURTHY,J

14.02.2018
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