

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 1152 of 2018

ORDER:

1) The present Civil Revision Petition is filed by the petitioners/plaintiffs under Article 227 of the Constitution of India, aggrieved by the order, dated 22.12.2017 passed in I.A.No.380 of 2017 in O.S.No.35 of 2011 on the file of the Junior Civil Judge, Mummidivaram, wherein and whereunder an application filed under Order VIII Rule 9 and Section 151 of C.P.C. seeking permission to file rejoinder to the written statement was rejected on the ground that the same is not maintainable under law and that the petitioners are not entitled to file rejoinder to the written statement filed by the defendants.

2) A perusal of the material on record would show that the petitioners/plaintiffs filed a suit for permanent injunction restraining the defendants, their men, followers, servants, associates, assignees and all other persons claiming through them from entering into the plaint schedule properties or in any way interfering with their peaceful possession and enjoyment of the same. A written statement came to be filed by the defendants disputing the allegations made in the plaint and also raising new pleas. Hence, the petitioners filed I.A.No.380 of 2017 seeking leave of the Court to file rejoinder to the written statement. It is also stated that if no leave is granted, the petitioners would be put to irreparable loss and hardship.

3) A counter came to be filed opposing the said petition stating that the suit was filed by the plaintiffs as minors represented by their mother as natural guardian. It is said that when the defendants filed written statement in the year 2011 itself, the natural guardian ought to have taken any steps in filing the rejoinder at the earliest. As such, it is urged that the petitioners are bound for the acts committed by the natural guardian.

4) After considering the rival submissions made, the trial Court dismissed the said application stating that the defendants can take any number of pleas where as the plaintiffs have to stick on to their own pleadings and that they are not entitled to seek any relief under Order VIII Rule 9 of C.P.C. Challenging the same the present Civil Revision Petition is filed.

5) Learned counsel for the petitioners would submit that the defendants filed the written statement by making false contentions against the plaintiffs and if no leave is granted, the petitioners will be put to great loss and hardship.

6) In *Sardar Darshan Singh and others v. Smt. Surjeeth Kaur*¹ this Court observed as under:

“17. Leave to file the rejoinder may be rejected only after going through the same, in case, the Court is of the opinion that such a rejoinder alters the cause of action pleaded in the plaint or on the ground that it makes out a new case resulting in injustice to the other side. Since

¹ AIR 2007 AP 201

admittedly the draft rejoinder was not filed, the Court below is not justified in presuming that the petitioners are proposing to set up a new plea.

18. The Court below committed an error in dismissing the application even without looking into the draft rejoinder.”

7) From the above, it is clear that rejoinder to the written statement can be rejected, only after going through the draft rejoinder and if the Court is of the opinion that the said rejoinder alters the cause of action pleaded in the plaint or on the ground that it makes out a new case resulting in injustice to the other side. Therefore, the Court has to primarily look at the draft rejoinder and if it comes to a conclusion that the pleadings therein totally alter the cause of action or it makes out a new case, it has to be rejected. Hence, the trial Court was not justified in rejecting the application without looking into the contents of the rejoinder.

8) In the instant case, the revision petitioners, while seeking leave of the Court to file a rejoinder, did not file the draft rejoinder, proposed to be filed in the Court. Having regard to the facts and circumstances of the case and in view of the judgment of this Court referred to above, the order under challenge is set aside and the petitioners shall file a fresh application along with the rejoinder, in which event the trial Court shall peruse the rejoinder filed and decide the issue, in terms of the judgment referred to above, after hearing all the necessary parties.

9) With the above direction, the Civil Revision Petition is disposed of. There shall be no order as to costs. Miscellaneous Petition, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

27.03.2018
gkv

