

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.6269 of 2016

ORDER:

This revision petition is filed under Article 227 of the Constitution of India assailing the orders dated 10.11.2016 passed in I.A.No.1758 of 2016 in O.S.No.56 of 2011 on the file of Principal Junior Civil Judge Court, Rajamahendravaram, East Godavari District.

2. Heard the learned counsel appearing for both the parties and perused the material available on record.

3. A perusal of the record reveals that the petitioner filed I.A.No.1758 of 2016 under Order VI Rule 17 CPC for amendment of the plaint. The respondents filed counter *inter alia* contending that the petitioner filed the petition to drag on the proceedings. The trial Court after considering the material available on record, dismissed the petition. Hence, the revision.

4. The point that arises for consideration is:

“Whether there is any illegality, irregularity or impropriety in the impugned order?”

5. The petitioner filed O.S.No.56 of 2011 on the file of Principal Junior Civil Judge Court, Rajamahendravaram, against the respondents for recovery of an amount of Rs.64,617/-. The petitioner claimed relief against the first respondent only. In the plaint, the petitioner mentioned the cheque number as 402590. The present petition is filed seeking

amendment of the pleading on the ground that by mistake, the cheque number is mentioned as 402590 instead of 402591. A perusal of the record reveals the trial was commenced in the mains suit.

6. A party, who files an application under Order VI Rule 17 CPC seeking amendment of pleadings after commencement of trial, has to establish due diligence on his part.

7. This Court carefully perused the affidavit filed by the petitioner. There is no mention in the affidavit despite due diligence, he could not file the application before commencement of trial. The suit was filed in the year 2011. The respondents have taken a specific plea that the cheque number is not correctly mentioned in the plaint. Even assuming but not conceding that there is a mistake at the time of drafting of the plaint, what prevented the petitioner to produce the cheque bearing No.402591 before the trial Court to substantiate his stand. For the reasons best known, the petitioner did not produce the cheque bearing No.402591. Along with the plaint, the petitioner filed true account copy showing the cheque number as 402590 dated 11.06.2007. In the absence of production of alleged cheque bearing No.402591, it is not safe to permit the petitioner to amend the plaint.

8. The trial Court in paragraph – 9 of the order gave specific finding that the petitioner did not produce cheque bearing No.402591. As observed earlier, the affidavit filed by the

petitioner is bereft of basic ingredients of proviso to Order VI Rule 17 CPC. The trial Court considered the material available on record in right perspective and dismissed the petition. The findings recorded by the trial Court are based on material available on record. I am fully endorsing with the findings recorded by the trial Court. The findings recorded by the trial Court are sustainable. There is no illegality, irregularity or impropriety in the orders of the trial Court warranting interference of this Court, while exercising the jurisdiction under Article 227 of the Constitution of India. Hence, the petition is liable to be dismissed.

9. In the result, the Civil Revision Petition is dismissed. There is no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Dt:04.12.2018

Rns

T.SUNIL CHOWDARY, J