

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.1572 of 2018

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 19.02.2018 passed in I.A.No.161 of 2018 in O.S.No.3 of 2008 on the file of the Court of Principal District Judge, at Khammam.

2. Heard the learned counsel appearing for both the parties.

3. A perusal of the record reveals that the first respondent filed I.A.No.161 of 2018 in O.S.No.3 of 2008 under Order 6 Rule 17 CPC for amendment of the plaint seeking alternative relief for refund of earnest money as well as amendment of certain pleadings. The first respondent filed counter inter alia contending that the amendment cannot be allowed at the stage of arguments. The trial Court after affording a reasonable opportunity to both parties, allowed 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?

P O I N T:

5. A perusal of the record reveals that the first respondent filed O.S.No.3 of 2008 on the file of the Principal District Court, Khammam, against the petitioner and respondents 2 to 4 for specific performance of agreement of sale. After completion of evidence of both parties, the trial Court posted the matter for

arguments. At that stage, the first respondent filed I.A.No.161 of 2018 under Order 6 Rule 17 CPC for amendment of plaint seeking alternative relief of refund of earnest money and also for amendment of certain pleadings. The trial Court allowed the petition.

6. The predominant contention of the learned counsel for the petitioner is that the trial Court without taking into consideration the scope of proviso to Order 6 Rule 17 CPC, allowed the petition on untenable grounds. *Per contra*, learned counsel for the first respondent submitted that the trial Court after taking into consideration various aspects allowed the petition, therefore, it is not a fit case to interfere with the impugned order.

7. It is needless to say that a person, who files a petition under Order 6 Rule 17 CPC after commencement of trial has to establish that despite due diligence, he/she could not take specific stand in the earlier pleadings. Suffice it to say the Court has to give a specific finding that the petitioner has satisfied the ingredients of proviso to Order 6 Rule 17 CPC. In order to appreciate the rival contentions of both parties, this Court carefully perused the impugned order. There is no mention in the impugned order that the petitioner has satisfied the basic ingredients of proviso to Order 6 Rule 17 CPC. If the order of the Court below is allowed to stand, certainly, it would amount to miscarriage of justice. As observed earlier, the amendment consisting of two parts. Part one is with regard to

refund of earnest money and part two is amendment of pleadings.

8. Taking into consideration the facts and circumstances of the case, this Court is of a considered view that it is a fit case to set aside the impugned order and remand the matter to the trial Court for fresh disposal.

9. In the result, the Civil Revision Petition is allowed setting aside the orders dated 19.02.2018 passed in I.A.No.161 of 2018 in O.S.No.3 of 2008 on the file of the Principal District Court, Khammam, and remanding the matter to the trial Court for fresh disposal. The learned Principal District Judge, Khammam, is hereby directed to dispose of I.A.No.161 of 2018 in O.S.No.3 of 2008 in accordance with law, afresh, as expeditiously as possible, after taking into consideration the scope of proviso to Order 6 Rule 17 CPC. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Dt:08.10.2018

Rns