

HON'BLE SRI JUSTICE S.V.BHATT

C.R.P. No.3226 OF 2013

ORDER:

Heard Mr.Ghanshyamdas Mandhani for petitioner and Mr.Resu Mahender Reddy for respondent.

The plaintiff in O.S No.284 of 2008 in the Court of Senior Civil Judge at Karimnagar is the revision petitioner.

The revision petitioner filed suit for specific performance of agreement of sale dated 23.01.2008. The respondent is contesting the suit by filing detailed written statement. The petitioner filed I.A. No.885 of 2012 under Order VI Rule 17 of CPC to delete Paragraph No.9 and substitute Paragraph No.9 as follows:

“That the suit is within limitation since the original agreement of sale is dated 23.01.2008 and on 03.03.2008 when the legal notice was issued and the defendant acknowledged the same on 04.03.2008 and failed to execute a registered Sale Deed.”

The learned trial Judge through the order impugned in the revision rejected the prayer for amendment. Hence the C.R.P.

Mr.Ghanshyamdas Mandhani contends that the revision petitioner is compelled to file the application for amendment as noted above to keep the pleadings consistent in the plaint filed in O.S No.284 of 2008. According to him, the details given in paragraph No.9 of the plaint ought not to be treated as deciding factor on the question of limitation or for any other purpose. According to him, the suit is filed for specific performance of agreement of sale dated 23.01.2008. The petitioner, if successful in

establishing the agreement, the Court might not have been precluded from considering the prayer on merits notwithstanding the alleged erroneous description in Paragraph No.9 of the plaint. Even assuming without admitting that this is a belated application, the counsel contends the Court under Section 3 of the Limitation Act is under obligation to examine whether the suit is within the period of limitation or not. Even at that point of time, the totality of pleadings and also the proof placed by the petitioner before the Court would have been considered. Except the minor deletion and substitution the petitioner is not changing the cause of action or a new plea is introduced. He prays for setting aside the order and allowing the revision.

Mr. Resu Mahender Reddy contends that the application is made after the trial on both sides is over and now the effort is to keep the evidence in line with the pleadings proposed to be introduced through the prayer made in the instant application. The learned counsel reads the order impugned and submits that no ground is made out for interfering with the order impugned in the C.R.P.

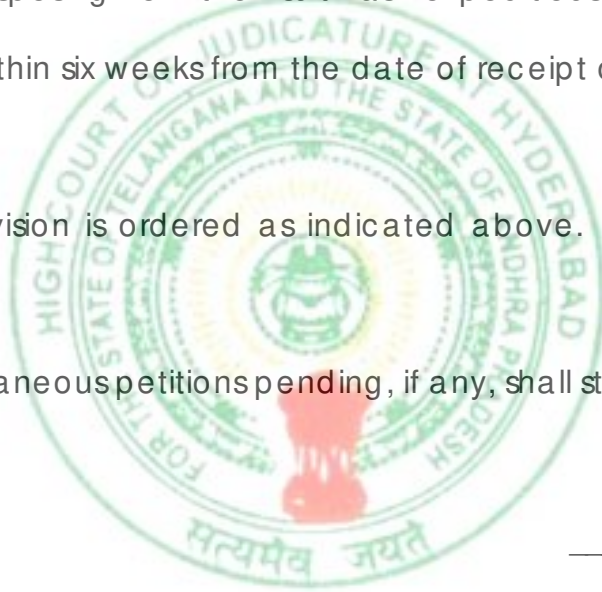
I have perused the record and noted the submissions of the counsel appearing for the parties.

For brevity, I am not proposing to refer to the admitted circumstances. The prayer for amendment is dismissed primarily on the ground of laches and also insertion of the plea at this stage is unsustainable. In the considered view of this Court both the reasons assigned by the trial Court are unsustainable. After perusing the

record, I am of the view that the petitioner has given date of agreement of sale as 23.01.2008 in paragraph No.3 of the plaint. What is referred in paragraph No.9 in the un-amended plaint does not find place anywhere else in the plaint. What is stated in the plaint ought to be treated as an avoidable mistake keeping in view the other averments in the plaint and also prayer of the proposed amendment even if considered at this stage neither changes the cause of action nor causes prejudice to the respondent. Hence, the order impugned in the revision is set aside. The trial Court considers disposing of the suit as expeditiously as possible, preferably within six weeks from the date of receipt of a copy of this order.

The revision is ordered as indicated above. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.



S.V.BHATT, J

Date:17.08.2018
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