

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION No.1583 of 2014

ORDER:

This civil revision petition is filed questioning the order, dated 19.03.2014, passed in I.A.No.522 of 2013 in O.S.No.113 of 2011, by the 10th Additional District & Sessions Judge, East Godavari at Rajamundry.

Learned counsel for the petitioner was heard on 08.11.2018 and the matter was listed for hearing the learned counsel for the respondents. Even today there is no representation for the respondents. Therefore, the orders are being pronounced.

The revision petition is filed questioning the order passed in I.A.No.522 of 2013. The said interlocutory application was filed to permit the plaintiff in the suit O.S.No.113 of 2011 to file a rejoinder to the written statement that has been filed by the defendants in the suit. In the written statement, that was filed, in paragraph Nos.5 and 7, it was averred that the plaintiff is not a contractor and he is only a labour contractor. The case of the plaintiff is that he was contractor engaged for civil works and not a labour contractor and therefore, to explain this issue a rejoinder was proposed to be filed by the petitioner herein. The rejoinder comprises three paragraphs, of which paragraph No.2 is relevant. The plaintiff wanted to rely upon a letter, dated 24.04.2009, issued by the respondents themselves, wherein the son of the plaintiff is shown as building contractor.

When this proposed rejoinder was filed along with I.A.No.522 of 2013, the same was rejected by the court below on the ground that under Order VIII Rule 9 CPC such a plea cannot be taken and that it would be

amounting to setting up a new case altogether and the very nature of the suit would be altered.

This court notices the judgment of the learned single Judge of this court in *T.Laxman Kumar v. G.Laxmikantha Reddy*¹ wherein at paragraph No.8 it is clearly held that if the facts of the written statement would go to the very root of the plaintiff's case and may result in a denial of relief, the plaintiff should be allowed to file a rejoinder to explain the facts. Another learned single Judge of this court in *Aloor Subrahmanyam v. Suthram Prabhakar*² clearly held that certain additional facts may have to be brought on record in certain circumstances and that the same cannot be shut out completely. Order-VIII Rule 9 CPC was discussed and the learned single Judge held that the provision *per se* does not stipulate any limitation on the power of the Court to allow the parties to file subsequent pleadings. However, the learned single Judge clearly held that such pleadings are permissible under certain circumstances.

In the case on hand, the defendants have taken a plea that is apparently in conflict with their letter, dated 24.04.2009. The contents of the letter however have to be proved during course of trial. At this stage, the rejoinder cannot be shut out totally as it is in defence to a plea raised in the written statement that may non-suit the plaintiff. In the case on hand, rejoinder is limited for a single issue, namely, that Sri G.Jai Kumar Raju is a building contractor and is not merely a labour contractor.

This court, after hearing the learned counsel for the petitioner and perusing the case law on the subject, is of the opinion that sufficient

¹ 2004 (5) ALD 561

² 2012 (3) ALD 202

cause is made out to interfere with the impugned order. Therefore, the order impugned is set aside.

The civil revision petition is accordingly allowed. In the circumstances, there shall be no order as to costs. As the suit is of the year 2011; the lower court is directed to dispose off the same on a priority.

Pending miscellaneous applications, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

Date: 13.11.2018
Dsr

