

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1711 OF 2011

ORDER:

This petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.370 of 2009 in O.S.No.1070 of 2003 dated 19.10.2010 passed by the Senior Civil Judge, City Civil Court, Hyderabad.

In a connected civil revision petition filed by same parties and in similar set of circumstances, this Court passed an order in C.R.P.No.1433 of 2011 dated 28.06.2013, the operative portion of which reads as follows:

“The respondents filed O.S.No.1070 of 2003 in the Court of the IX Senior Civil Judge, City Civil Court, Hyderabad against the petitioners for eviction and recovery of arrears of rent. The petitioners, on the other hand, filed a counter-claim. The trial Court dismissed the suit for default on 23.10.2009. Thereupon, the petitioners filed I.A.No.370 of 2009 under Order 9 Rule 9 C.P.C. with a prayer to restore the counter-claim. The trial Court allowed the I.A., through its order, dated 19.10.2010, and restored the suit to file. The grievance of the petitioners is that the counter-claim alone ought to have been restored. Heard the learned counsel for the petitioners and the learned counsel for the 1st respondent. Left to themselves, the petitioners did not file any suit. It was only after the respondents filed the suit that the petitioners filed their counter-claim. Though it is represented that the respondents are not pursuing the remedy, the record discloses that when the suit was dismissed for default, there was no representation for the petitioners also.

It is on account of the same that the petitioners filed an application under Order 9 Rule 9 C.P.C. Restoration of any suit in part would bring about several complications. For instance, if an exparte decree is passed by a civil Court in a suit filed against four defendants, the restoration of the exparte decree can be set aside only in respect of such of the defendants who filed an application under Order 9 Rule 13 C.P.C. However, that very provision creates a facility to the effect that the decree can be set aside vis-à-vis the other defendants also, particularly when it is indivisible. The attempt that made by the petitioners to split the counter-claim from the suit cannot at all be permitted. The civil revision petition is accordingly dismissed. There shall be no order as to costs. The miscellaneous petition filed in this revision shall also stand disposed of.”

Let there be a similar order even in this case.

In the result, the civil revision petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:27.02.2018

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