

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2153 of 2018

ORDER:

- 1) Assailing the order, dated 07.02.2018, in I.A.No.679 of 2017 in O.S.No.260 of 2016 passed by the II Additional Senior Civil Judge, Kakinada, wherein the petition filed under Order 6 Rule 17 and Section 151 of the Code of Civil Procedure (for short "the CPC) by the petitioner/defendant is dismissed, the present Revision came to be filed under Article 227 of the Constitution of India.
- 2) The material available on record shows that the respondent/plaintiff has filed the suit for recovery of the amount basing on the promissory note, which is said to have been executed by the petitioner/defendant. After commencement of trial, the petitioner/defendant filed the present I.A., seeking amendment of the written statement. The contents of the petition are that one Velaga Venkata Krishna Rao, who is a close relative of respondent/plaintiff, is the man behind filing of the present suit. Previously the defendant worked as a President of Sri Rama Primary Agricultural Cooperative Credit Society, Peddapurappadu during 2005 to 2013. It is pleaded in the petition that the said V.Venkata Krishna Rao was the Vice President of the said society and there were no cordial terms between the petitioner and the

said V.Venkata Krishna Rao during the said tenure. In view of the same, the said V.Venkata Krishna Rao tendered his resignation to the post of Vice President. Since then the said V.Venkateswara Rao bore grudge against the petitioner/defendant and as such he made the plaintiff to file the present suit.

3) The petitioner submits that the main contention for filing the present petition seeking to amend the written statement is that at the time of preparation of the written statement, he did not comprehensively instruct his advocate as regard the background in which the present suit came to be filed. The respondent/plaintiff filed I.A.No.41 of 2017 seeking appointment of Advocate-Commissioner for recording his evidence and for appointing the said Velaga Venkata Krishna Rao as his translator since the plaintiff purported to be deaf. In that situation, he filed his counter wherein he got the circumstances mentioned and while going through the written statement his Advocate found that these particulars were not mentioned in the written statement and as such he advised amendment of the written statement by incorporating a separate paragraph narrating the said particulars.

4) The respondent/plaintiff filed counter contending that the present petition is filed only to cover-up his latches and create a new plea subsequent to filing of chief affidavit of P.W.1, who is a

deaf person. It is said that when the counsel for the petitioner accepted to put the question in writing to P.W.1 while he is the witness box, the said petition was not pressed by the respondent. During the enquiry the counsel for the respondent reported no objection, when the brother of defendant translated the lip movements to the questions posed by the advocate for petitioner. So when no plea was taken by the petitioner in written statement at the first instance it is deemed that he waived the same, but later he intends to raise the same by way of amendment of written statement. After hearing both sides, the Court below was pleased to dismiss the I.A., holding that the proposed amendment is contrary to the pleadings in the original written statement. Hence, the present Civil Revision Petition.

5) It is born out from the record that the petitioner/defendant has filed the written statement admitting that he had borrowed the suit amount from the plaintiff, but it was denied only in respect of the amount mentioned in the promissory note, which has to be established by adducing evidence during the course of trial. As seen from the record, the proposed amendment referred to above, is contrary to the original pleadings in the written statement and if the same is now permitted it will create a new cause of action since the proposed amendment is inconsistent

and contrary to the pleadings in the original written statement.

Hence, the court below is rightly dismissed the I.A. and I do not find any illegality or irregularity warranting interference by this court.

6) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. As a sequel to it, miscellaneous petitions pending if any in this C.R.P. shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt: 03.10.2018

GM

