THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.3987 of 2017

ORDER:

1 This Civil Revision Petition is filed under Article 227 of the Constitution of India, assailing the order dated 02.08.2017 passed in I.A.No.294 of 2017 in O.S.No.480 of 2015 on the file of the Court of the II Additional Senior Civil Judge, Vijayawada, Krishna District.

2 A perusal of the record reveals that the respondent filed O.S.No.480 of 2015 on the file of the Court of the II Additional Senior Civil Judge, Vijayawada, against the petitioner for recovery of suit amount. *Pendentilite*, the respondent filed I.A.No.294 of 2017 under Order VI Rule 17 r/w Section 151 CPC, seeking amendment of his name. The petitioner filed counter inter *alia* contending that the petition is not maintainable under law. The trial court, after affording reasonable opportunity to both parties, allowed the said petition. Hence the present Civil Revision Petition.

3 Heard the learned counsel for both sides.

4 Now the point for consideration that arises in this Civil Revision Petition is 'whether there is any illegality, irregularity or impropriety in the impugned order, warranting interference of this court in exercise of jurisdiction under Article 227 of the Constitution of India?'

POINT:

5 It is an admitted fact that the respondent filed O.S.No.480 of 2015 on the file of the Court of the II Additional Senior Civil Judge, Vijayawada, against the petitioner for recovery of money basing on

the suit promissory note dated 01.05.2012. It is not in dispute that in the plaint the name of the respondent was mentioned as Lolugu Sekhar. The respondent filed his chief examination affidavit by mentioning his name as Lolugu Sekhar. In Ex.A.1 also the name of the respondent is mentioned as Lolugu Sekhar. At the time of cross examination of the respondent (P.W.1), the petitioner put a question that there is no person by name Lolugu Sekhar.

6 If really the respondent is also called as Lolugu Sekhar @ Lolugu Venkata Surya Chandra Sekhar Rao, what prevented him to mention his full name in the plaint as well as in the chief examination affidavit filed by him? A perusal of the record also reveals that the respondent did not file any document much less authenticated document to show that he is also called as Lolugu Sekhar @ Surya Venkata Chandra Sekhar Rao.

7 In order to appreciate the contention of the respondent it is not out of place to extract the relevant portion in para No.1 of the affidavit of the respondent filed before the trial court, which reads as hereunder:

"There is wilful negligence or disobedience on my part"

8 When the respondent himself admitted that there is wilful negligence or disobedience on his part, this court is unable to understand how the court below allowed the amendment petition. The trial court has not considered the scope of proviso to Order VI Rule 17 CPC. The trial court simply allowed the petition that there would not be any prejudice to the petitioner / defendant. If the

impugned order is allowed to stand, undoubtedly, it will cause untold hardship to the petitioner.

9 Accordingly, the Civil Revision Petition is allowed, setting aside the order dated 02.08.2017 passed in I.A.No.294 of 2017 in O.S.No.480 of 2015 on the file of the Court of the II Additional Senior Civil Judge, Vijayawada, Krishna District. No order as to costs. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: August 29, 2018
Kvsn