

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.3329 OF 2018

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 14.03.2018 passed in I.A.No.654 of 2017 in O.S.No.91 of 2011 on the file of the Court of the Junior Civil Judge at Alampur.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that the respondent filed O.S.No.91 of 2011 on the file of the Court of the Junior Civil Judge at Alampur, against the petitioners seeking perpetual injunction in respect of the suit schedule property. During pendency of the suit, the respondent filed I.A.No.654 of 2017, under Order VI Rule 17 C.P.C., seeking for amendment of the plaint. The petitioners filed a counter opposing the claim of the respondent. The trial Court, after affording a reasonable opportunity to both parties, allowed the petition. Hence, the revision.

4. Now the point that arises for consideration in this revision is:

“Whether there is any illegality, irregularity or impropriety in the impugned order which warrants interference of this Court?”

5. It is needless to say that a party to the proceedings, who files an application for amendment of pleadings, after commencement of the trial, has to satisfy the ingredients of proviso to Order VI Rule 17 C.P.C. The respondent has to take a specific plea in the affidavit that despite due diligence, he could not notice the facts to be brought on record. The Court, while deciding the petition, has

to give a specific finding that in spite of due diligence, the respondent could not notice the facts, which he intends to bring on record by filing an amendment petition. For one reason or other, the trial Court has not given any finding with regard to due diligence on the part of the respondent. If this Court expresses any opinion on this aspect, the same may cause prejudice to one of the parties to the proceedings.

6. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that it is a fit case to remand the matter to the trial Court to consider whether the respondent has satisfied the ingredients of proviso to Order VI Rule 17 C.P.C. basing on the material available on record.

7. In the result, the Civil Revision Petition is allowed setting aside the order dated 14.03.2018 passed in I.A.No.654 of 2017 in O.S.No.91 of 2011 on the file of the Court of the Junior Civil Judge at Alampur and remanding the matter. The trial Court is hereby directed to dispose of I.A.No.654 of 2017 on merits in the light of the proviso to Order VI Rule 17 C.P.C. There shall be no order as to costs.

8. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 09.08.2018
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