

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITIONS No. 3743 AND 3727 OF 2018

COMMON ORDER :

Petitioner in both these Revisions is the defendant in O.S. No. 410 of 2011 on the file of the Additional Senior Civil Judge's Court at Kurnool, filed by the respondent – plaintiff for recovery of money on the foot of promissory notes and the same is for the evidence of the defendant. At that stage, I.A. Nos. 166 and 167 of 2018 have been taken out seeking amendment of the written statement and to receive certain documents, including Registered Cancellation GPA, Writ Petition copy, agreement of sale, dated 01.12.2008, voters ID cards of the plaintiff etc. on the ground that the Revision filed by the petitioner was dismissed holding that he had not pleaded in respect of the mortgage deed. Both the Applications were dismissed by separate orders, dated 08.06.2018. Hence, these Revisions.

Heard learned counsel for both the parties.

Through I.A.No.166 of 2018, the petitioner proposed to amend the written statement by inserting the following at 9th line in 11th paragraph:

“ It is submitted that the defendant paid the amounts of Rs.9,00,000/- by way of part payments on the four promissory notes to the plaintiff and her son K. Kiran Kumar. They jointly issued the receipt on 28.02.2011 for the said amount. The remaining amount of Rs.50,000/- payable on the said four promissory notes, which was received by the son of the plaintiff and endorsed the same on 03.03.2011 in receipt, dated 28.02.2011. It is further submitted that in the 1st week of February 2011, the defendant paid a sum of Rs.6,00,000/- to the plaintiff and her son namely Kiran Kumar. After receipt of the said amount from this defendant towards part payment of Rs.6,00,000/- immediately the son of the defendant K. Kiran Kumar advanced the amount of Rs.6,00,000/- (Rupees six lakhs only) as a loan to one Dumavath Chakra Naik of L.K. Thanda of Gani Post of Gadivemula Mandal, Kurnool District and obtained

the registered simple mortgage from him on 10.02.2011 itself from him vide document No. 427/2011 at S.R.O. Orvakal. The said fact came to light to this defendant, after filing of the written statement and prior to the cross-examination of P.W.1. So, the defendant is unable to file the said document in support of his case.”

As can be seen from the amendment sought, the petitioner seeks to include the specific transactions alleged to have been undertaken by the plaintiff with the money that was paid by him. In this context, it may be noted that in the original written statement, in para 10, the petitioner – defendant had categorically asserted that a sum of Rs. 9 lacs was paid on 28.02.2011 and a receipt also was issued in his favour by the respondent - plaintiff and her son. Likewise, a sum of Rs. 50,000/- was alleged to have been repaid and accordingly, an endorsement to that effect was also made by the son of the respondent. In other words, there is a categorical assertion on behalf of the petitioner that a sum of Rs. 9,50,000/- was repaid to the respondent and receipts were obtained. Even assuming for the sake of argument that the respondent had invested the said amount by lending it to another individual, as stated in the amendment Application, the said fact, by itself, would not alter the position of the case in any manner. By adducing appropriate evidence, the stand taken by the petitioner with respect to payments made to the respondent and obtaining receipts from her would get established and that there would be no requirement of letting any further evidence with respect to utilisation of monies alleged to have been received by the respondent - plaintiff. In those circumstances, since there is no explanation forthcoming for the delay in seeking amendment and considering the fact that admittedly, the trial has already commenced, the Application seeking amendment does not deserve

any consideration. Hence, this Court does not find fault with the conclusion arrived at by the learned Senior Civil Judge to the effect that the petitioner failed to prove that the amendment now sought is necessary for determining the real questions in controversy and that he could not raise the same at the time of filing the written statement. Civil Revision Petition No.3743 of 2018 therefore, lacks merit and it is accordingly, dismissed. No costs.

Consequent of dismissal of the above Revision, wherein amendment of the written statement was not permitted, Civil Revision Petition No. 3727 of 2018 which questioned the order of the learned Senior Civil Judge refusing to receive certain documents, does not survive and the same is accordingly, dismissed. No costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

31st October, 2018

ksld

CHALLA KODANDA RAM, J

