

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REIVISION PETITION No.3946 OF 2018

ORDER:

This civil revision petition is filed by the petitioners/defendants aggrieved by the order dated 26.04.2018 in I.A.No.175 of 2018 in O.S.No.24 of 2016 on the file of Principal Junior Civil Judge, Miryalaguda, whereunder the trial court dismissed the petition filed by the petitioner to receive the agreement dated 17.10.2017 styled as "Oppanda Patram" said to be executed between the plaintiff and defendant.

2. The submission of learned counsel for petitioner is that, during the pendency of the suit, both parties entered into a compromise styled as "Oppanda Patram" dated 17.10.2017, whereunder, the plaintiff agreed to withdraw the suit, but, later the plaintiff gave a go by to the said agreement and refused to withdraw the suit and therefore to bring this fact to the notice of the court, the defendant proposed to file the said document, but, the trial court dismissed the said petition on a flimsy ground that the compromise was entered into after filing of the suit and therefore, it has no relevancy to decide the issues involved in the suit.

3. As can be seen from the impugned order, the respondent/plaintiff in his counter admitted the compromise,

but contended that the petitioners promised to pay the balance amount and have not paid the same and therefore, he did not withdraw the suit. Be that it may, the trial court dismissed the petition on the ground that the compromise was entered into after filing of the suit and therefore, it has no relevancy. It is constrained to note the observation of the trial court is not correct in the light of the admission made by the respondent/plaintiff in its counter.

4. As can be seen from the impugned order, the respondent/plaintiff admitted to have entered into a promise, but, his contention is that since the petitioners/defendants failed to pay the balance amount, therefore, the plaintiff did not withdraw the suit. In that view of the matter, whether under the agreement any amount was proposed to be paid by the defendants to the plaintiff and whether plaintiff agreed to withdraw the suit on receiving the agreed amount etc., would amount to material facts, which have to be considered by the court. Their relevancy with regard to the main issues involved in the suit have also to be considered. Therefore, merely because the document was entered into by the parties pending the suit that cannot be a ground to dismiss the petition.

5. Therefore, the civil revision petition is allowed and the impugned order is set aside and the trial court is directed to receive the impugned document during the evidence of the

petitioners/defendants subject to law of stamp duty and registration and then consider the effect of the document in the issues involved in the suit and pass the judgement on merits.

As a sequel, miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

U.DURGA PRASAD RAO, J

07.09.2018
SS

