

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. No.4063 of 2018

O R D E R:

Heard counsel for the petitioners and Sri G.Venkateswara Rao, Counsel appearing for respondent.

2. In this Revision, filed under Article 227 of the Constitution of India, petitioner has assailed proceedings dt.22.01.2018 of the Court below marking Exs.A9 to A11 in O.S.No.290 of 2007 on the file of the Principal Junior Civil Judge, Punganur, Chittoor District.

3. Petitioners are defendants in the suit. They had filed a written statement raising a counter claim on 05.07.2008.

4. The respondent did not file a written statement to the said counter claim till 18.11.2016 and when he sought to file such written statement without seeking permission of the Court, the court below allowed it.

5. Petitioners assailed the same in CRP No.6712 of 2017.

6. On 19.01.2018, in CRP.MP.No.6611 of 2017 in CRP No.6712 of 2017 stay was granted for a period of four (04) weeks of the proceedings in the said suit.

7. The said order was not brought to the knowledge of the Court below and it proceeded to mark Exs.A9 to A11 on

22.01.2018, notwithstanding the stay of further proceedings in the suit granted on 19.01.2018 in CRP.No.6712 of 2017.

8. Ultimately, the said CRP.No.6712 of 2017 itself came to be allowed on 23.04.2018 after contest and the receipt of the respondent's written statement to the petitioners' counter claim in the suit by the Court below was set aside and the written statement filed by the respondent in answer to the counter claim of the petitioners was struck off. However, the documents Exs.A9 to A11 marked on 22.01.2018 continued on the file of the Court below.

9. Counsel for the petitioners contends that the said documents were marked by the Court below on 22.01.2018, in spite of knowing about the pendency of CRP.No.6712 of 2017 before this Court and grant of stay by this Court on 19.01.2018 in the said Revision and that the said documents were marked without any petition being filed by the respondent for receiving the same, since they had not been filed along with the plaint.

10. Counsel for petitioner further contends that Memos were filed on 09.05.2018 and 18.06.2018 bringing to the notice of the Court below of the marking of the said documents in spite of the written statement of the respondent to the counter claim of the petitioners being struck off in the order dt.23.04.2018 in CRP.No.6712 of 2017, but the Court

below did not refer the said memos and proceeded with the case.

11. I find considerable force in the contention of the counsel for petitioners. Though counsel for the respondent sought to contend that it was the fault of the petitioners in not communicating the said order passed by this Court on 19.01.2018 in CRP.MP.No.6611 of 2017 in CRP No.6712 of 2017, which is the cause for this situation, the respondent cannot take advantage of the same, since admittedly the respondent's written statement to the counter claim filed by the petitioners was struck off in CRP.No.6712 of 2017 and Exs.A9 to A11 came to be marked on 22.01.2018, after stay of further proceedings in the suit was granted by this Court, without there being any application filed by respondent to receive them under Order VII Rule 14(3) CPC.

12. Therefore, the Court below is directed to discard Exs.A9 to A11 from consideration by it, while deciding the suit for all purposes.

13. The Civil Revision Petition is allowed as above. No order as to costs.

14. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

03rd October, 2018.
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