

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.4903 of 2018

ORDER:

1) Aggrieved by the order, dated 09.08.2018, passed in I.A.No.1140 of 2018 in O.S.No.7 of 2012 on the file of the Principal Senior Civil Judge, Rajahmundry, wherein an application filed under Order IX Rule 7 of C.P.C., was dismissed, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

The respondent/plaintiff filed O.S.No.7 of 2012 for recovery of money basing on a promissory note. The plaintiff also filed similar suits O.S.No.582 of 2012 and O.S.No.635 of 2012, which are pending before the Court of I Additional Senior Civil Judge, Rajahmundry. Since the plea taken in all the suits is one and the same, Transfer O.P.No.13 of 2018 came to be filed before the Court of Principal District Judge, Rajamahendravaram, for conducting cross-examination in all the suits at one time. The said Transfer O.P. was filed on 08.02.2018. On 09.02.2018 learned counsel for the petitioner could not attend the Court and requested one of his colleagues to represent before the Court, about filing of Transfer O.P. The same came to be rejected by the trial

Court and consequently closed the cross-examination of PW.1 and 2. This was on 09.02.2018. Within three days thereafter i.e., on 14.02.2018 an application came to be filed to set aside the exparte order.

3) A counter came to be filed by the respondent opposing the averments made in the petition. It is stated that the petitioner is in a habit of filing applications one after the other and dragging the proceedings for years together.

4) After considering the rival submissions, the trial Court dismissed the application on 09.08.2018 on the ground that even on earlier occasion the petitioner was set exparte and that no mercy or any indulgence can be shown towards the petitioner, which will harm the reputation of the institution. Challenging the same, the present Civil Revision Petition came to be filed.

5) Learned counsel for the petitioner mainly submits that his counsel did not cross-examine the two witnesses on 09.02.2018, as Transfer O.P. came to be filed before the Principal District Judge, for clubbing all the three suits and the same was filed on the previous day. Without considering the same, the trial Court rejected the request on the ground that there was no stay in the O.P.

6) It is no doubt true that there was no order of stay in Transfer O.P. No.13 of 2018 filed by the petitioner, but it is to be noted that immediately thereafter on 14.02.2018 the petitioner filed an application to set aside the exparte order setting out reasons as to why he could not cross-examine PWs.1 and 2 on that day. The fact that the Transfer O.P. is pending is not in dispute. The fact that three suits seeking identical relief are pending consideration is also not in dispute. Having regard to the above, whether past conduct could be a criteria to reject the request of the petitioner.

7) It may be true that the petitioner was set exparte in the year 2012, but thereafter the order was set aside and the petitioner be participated in the proceedings before the Court. Infact there is nothing on record to show that the trial Court could not proceed with the case because of the conduct of the petitioner.

8) Having regard to the facts in issue and taking into consideration the fact that an application came to be filed immediately after he was set exparte, giving reasons as to why he did not choose to cross-examine PWs.1 and 2, which according to the petitioner, was due to filing of Transfer O.P. seeking clubbing of all the three suits and the pendency of Transfer O.P., the order under challenge is set aside and the

petitioner shall be permitted to cross-examine PWs.1 and 2 on the date fixed by the Court, which would be within a period of three weeks from today and thereafter proceed in accordance with law.

9) Accordingly, the Civil Revision Petition is allowed.

10) There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

28.09.2018
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JUSTICE C. PRAVEEN KUMAR