

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION No.557 of 2014

ORDER:

This civil revision petition arises against the order, passed on 08.11.2013 in I.A.No.863 of 2013 in O.S.No.517 of 2013, on the file of the Special Sessions Judge for SC & ST (POA) Act, 1989-cum-Additional District & Sessions Judge, Ranga Reddy District at L.B.Nagar.

This court has heard Sri P.V.Sanjeevarao, learned counsel for the petitioner.

The grievance of the petitioner is that while dismissing the application filed under Order 38 Rule 5 CPC, the lower court made an observation that the claim of the petitioner for refund of the amount is barred by time.

Learned counsel for the petitioner submits in all fairness that the trial has commenced, plaintiff's side evidence was closed and the defendants' evidence is in progress. Learned counsel submits that the limitation is a mixed question of fact and law and the same has to be decided after taking entire evidence. The finding of the court that the claim is barred by time is coming in the way of the petitioner and may (if left as it is) prevent him from arguing about limitation.

This court is of the opinion that there is sufficient strength in the submissions made by the learned counsel for the petitioner.

As the application filed under Order 38 Rule-5 CPC was dismissed and as the trial is in progress, this court finds no reason to go into the merits and demerits of the application i.e., I.A.No.863 of 2013 and to interfere with the impugned order. However, it is made clear that the

finding of the court below, while deciding the interlocutory application, that the claim of the petitioner is barred by time does not appear to be correct. The said issue should be decided after the trial is completed.

Therefore, the civil revision petition is allowed to that limited extent. It is made clear that issue of limitation is open and the court below can decide that issue without in any manner being influenced to what is stated in this order. In the circumstances, there shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 13.11.2018
Dsr

D.V.S.S.SOMAYAJULU,J

