

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

C.R.P.NO.4251 of 2014

ORDER:-

This revision petition is filed questioning the order, dated 21-10-2014 passed in I.A.No.433 of 2014 in O.S.No.106 of 2013 by the Principal Senior Civil Judge, Kakinada.

2. The suit O.S.No.106 of 2013 is filed by the present revision petitioner, which is a Literary Association, Kakinada, which runs a popular Club in the town of Kakinada. The Club is also known as Town Hall Club. When the members of the Club were playing the game of Rummy and Bridge, the respondents apparently raided the same. Questioning the action of the respondents, W.P.No.34317 of 2012 was filed. The said writ petition was allowed to be withdrawn by this court by its order dated 05-11-2012 granting permission to the petitioner to file a suit on the same lines as in O.S.No.544 of 2008, which was filed by another Club situated in Kakinada. Thereafter, O.S.No.106 of 2013 was filed initially for appointment of Advocate Commissioners to supervise the games of cards that are being played in the Club. It is the contention of the revision petitioner that they are not breaking the Law and that games of Rummy and Bridge are games of skill and do not amount to gambling. After the suit was filed and at the initial stage before the trial had commenced, the plaintiff

moved an application I.A.No.433 of 2014 to amend the plaint and seeking the reliefs that are spelt out in the application. The principal relief that is sought to be introduced by virtue of amendment is the relief of granting a permission for the members and guests of the plaintiff-association for playing game of Rummy and consequently to amend the plaint. Initially, the relief of appointment of Advocate Commissioners alone was sought and thereafter a declaratory relief was then sought to be brought in by way of an amendment application. By the impugned order, the said application was dismissed. Questioning the same, the present revision petition is filed.

3. This court has heard Sri N.Siva Reddy, learned counsel for the petitioner. There is no representation for the respondents.

4. The learned counsel for the petitioner points out that the order passed by this court in W.P.No.34317 of 2012 has been misconstrued by the court below as a direction. According to the learned counsel for the petitioner, O.S.No.544 of 2008 was filed by another Club seeking the relief of appointment of an Advocate Commissioner. After the permission was granted by this court in the writ petition mentioned earlier, the present suit was filed initially on the very same lines as in O.S.No.544 of 2008. Thereafter, the plaintiff has realized that there would be a legal block for

granting a relief of declaration. So they sought permission to amend the plaint. However, the learned counsel points out that the application was dismissed by the court below on the ground that the petitioner has not filed the suit "in the same lines" as in O.S.No.544 of 2008. According to the learned counsel, the lower court interpreted the matter very strictly and held that this was a direction from this court and that only a suit for appointment of Advocate Commissioner could have been filed. According to the learned counsel, this finding is clearly erroneous.

5. This court notices that this is not a post-trial amendment and is an amendment which is moved in the year 2013 itself soon after the suit is filed. This court has also perused the plaint that has been filed. Sufficient averments are made that the members of the plaintiff-association are playing the games of Rummy and Bridge and that they are lawful games and that they do not fall within the ambit of definition of gambling or games of chance. There is sufficient pleading in the plaint that the game of cards that is being played in the Club is a game of skill. Therefore, the amendment is sought to get an appropriate relief. Time and again, it has been held by the Highest Court of land that if the amendment is clarificatory and it is necessary for appropriate adjudication of the entire matter, the same should be allowed particularly when the

amendment is a pre-trial amendment. The counter filed by the respondents also shows that the essential objection that is raised is that the nature of the suit will be changed. This is not a tenable. The averments in the plaint remain the same and the essential amendments are to be carried out in the “prayer” sought. As mentioned earlier, it is in the nature of clarificatory amendment and the substance of the plaint has not undergone any change what-so-ever, in the opinion of this court. Lastly, this court also finds sufficient strength in the arguments made by the learned counsel for the petitioner that the order dated 05-11-2012 permitting the writ petitioner therein to withdraw the writ petition and to file the suit in the same lines as in O.S.No.544 of 2008, does not mean that an exact/identical suit should be filed. This court said that a suit “in the same lines” as in O.S.No.544 of 2008 should be filed. It does not mean that no other relief cannot be claimed. The interpretation of the trial court, in the considered opinion of this court, is incorrect. In order to get over the plausible stumbling block that a mere suit for appointment of an Advocate Commissioner will not lie without an appropriate declaratory relief, the present application has been filed.

6. Therefore, for all the reasons, this court is of the opinion that the impugned order is not tenable in law. It is

passed on an erroneous appreciation of the order passed by this court.

Accordingly, the Revision Petition is allowed and the order dated 21-10-2014 passed in I.A.No.433 of 2014 in O.S.No.106 of 2013 by the Principal Senior Civil Judge, Kakinada is set aside and I.A.No.433 of 2014 is allowed. No costs. Miscellaneous Petitions pending, if any, shall stand closed in consequence.

12-11-2018
TSNR



D.V.S.S.SOMAYAJULU,J