

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P.NO. 6506 OF 2018

O R D E R

This revision is filed against the order and decree dated 16.08.2018 passed by the court of IX Additional District Judge, Chittoor in I.A.No.91 of 2018 in O.SNo.28 of 2016, wherein and whereby, the application filed by the defendant No.3 under Section 151 of C.P.C. seeking to direct the plaintiff to commence evidence instead of the defendants commencing their evidence, was dismissed.

Learned counsel for the petitioner submits that since the plaintiff has filed the suit for recovery of amount, burden lies on him to lead evidence in support of his claim, but the trial court without considering the provision under Order 18, Rule 1 of C.P.C., directed the defendants to lead evidence first, therefore, the impugned order is liable to be set aside and the respondent / plaintiff may be directed to lead evidence first instead of defendants.

On the other hand, Sri P.Veera Reddy, learned Senior Counsel appearing for the 1st respondent / plaintiff submits that under Order 18, Rule 1 of C.P.C., the plaintiff has to first lead the evidence, but in the present case, the suit is filed for recovery of the amount and the defendants are pleading discharge, therefore, in view of the provision contained in Order 1, Rule 18 of CPC., the defendants have to adduce evidence first, and the trial court rightly rejected

the application of the petitioner and the impugned order may not be interfered with.

Rule 1 of Order of 18 CPC is required to be noted to appreciate the contentions of the rival parties:

1. Right to begin:- the plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendants the plaintiff is not entitled to any part of the relief which he seeks in which case the defendants has the right to begin.”

A reading of the above provision makes it clear that the plaintiff has the right to begin first to lead evidence in support of his claim. But if the defendant admits the facts alleged by the plaintiff and contends either in point of law or on some additional facts, which disentitles the plaintiff to seek his relief, then defendant has the right to begin.

In this case it is to be seen that the suit is filed for recovery of amount and the defendants are pleading discharge, which obviously shows that they are admitting the suit claim. If the defendants are able to prove their claim, then the plaintiff would not be entitled to the relief sought for in the suit. Therefore, under Order 18, Rule 1 of CPC., the defendants have to begin first by leading evidence in support of their plea of discharge. The trial court has also framed a specific issue at issue No.4, with regard to discharge pleaded by the defendants, which forms the core issue among other issues, for trial. Considering the pleadings of the respective parties and provision contained in Order 18, Rule 1 of

C.P.C., the trial court, in my considered view, has rightly dismissed the present application of the petitioner, and hence no exception can be taken.

In view of the facts and circumstances of the case, I do not find any reason to entertain the revision under Article 227 of the Constitution of India and the same is accordingly dismissed.

As the suit is of the year 2016, the trial court shall make an endeavour to dispose of the suit as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order, and it is needless to observe that both the parties shall co-operate with the disposal of the suit within the period stipulated.

Interlocutory applications pending, if any, shall stand closed.
No costs.



A.RAJASJELER REDDY,J

DATE:28—11—2018

AVS