

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

C.R.P. No.5628 of 2017

ORDER:

The challenge in this Civil Revision Petition is the order dt.13.09.2017 in I.A.No.138 of 2017 in O.S.No.70 of 2008 passed by the Senior Civil Judge, Nagarkurnool, whereunder the learned Judge dismissed the petition filed by the petitioner/defendant under Order XVIII Rule 17 CPC.

2) The respondent/plaintiff filed money suit against the petitioner/defendant wherein, when the matter was coming up for defendant's evidence, the petitioner filed I.A.No.138 of 2017 to recall PW1 for further cross-examination on the plea that certain documents mentioned in the petition have to be confronted to PW1 to prove that he is a money lender and also on the aspect whether the amount mentioned in the suit pro-note was reflected in the bank accounts of PW1.

3) The respondent/plaintiff opposed the said petition *inter alia* contending that the petitioner/defendant was not diligent throughout inasmuch as once he remained ex-parte and the Court on liberal consideration set aside ex-parte decree dated 03.02.2009 and permitted him to contest the suit and thereafter plaintiff's evidence was adduced and defendant thoroughly cross-examined the plaintiff's witnesses and during that stage petitioner/defendant filed I.A.No.571 of 2014 for amendment of written statement to take a plea that plaintiff is a professional money lender but without having any valid money lending licence, he lent money

to various persons and also filed quite a number of suits in the Courts at Nagarkurnool and the said petition was dismissed by the trial Court. The petitioner/defendant did not file any appeal against said order and after a long lapse of two years filed the instant petition to recall PW1 for further cross-examination on the same ground which is untenable.

4) The trial Court having agreed with the contention of respondent/plaintiff dismissed the petition on the main observation that suit is of the year 2008 and the documents proposed to confront to PW1 were of the years 2005, 2008 and 2012 which were much earlier to the date of cross-examination of PW1 and the petitioner/defendant did not show any valid reasons as to why those documents were not produced at the earliest point of time.

5) Heard arguments of Sri V.Hanumanth Rao, learned counsel for petitioner and Sri K.Devender, learned counsel for respondent.

6) The point for determination is:

“Whether there are merits in this CRP to allow?”

7) **POINT:** Admittedly, the earlier I.A.No.571 of 2014 filed by the defendant to amend the written statement to add a plea that respondent/plaintiff was doing money lending business without valid licence was dismissed by the trial Court and since no appeal was carried to the higher Court, the said order has become final. Now, the petitioner filed the instant petition questioning the impugned order more or less on the same grounds. As observed by the trial Court, the documents sought to be confronted to PW1 were between the years 2005 and 2012 i.e. much

earlier to the cross-examination of PW1. In that event, the petitioner/defendant being a prudent and diligent person ought to have produced those documents at the earliest point of time to confront at the initial cross-examination of PW1. In the affidavit filed in support of petition in I.A.No.138 of 2017 the petitioner/defendant did not make a whisper as to why those documents could not be filed at the earliest opportunity of time. Though the Courts should be liberal in allowing the petitions of present nature so as to see that justice is not trampled, at the same time, it is the duty of the Court to see whether the petitioning party was diligent throughout in prosecuting his case and vindicating his rights. The record shows at the earliest stage he remained *ex parte*. The trial Court considering his valuable rights involved in the case, set aside the *ex parte* decree and permitted him to contest. Even thereafter he was not diligent in securing all the necessary documents to establish his case. I.A.No.571 of 2014 filed by him was dismissed and he did not take up the matter to the higher Court. Now, two years after cross-examination of PW1 he filed the petition in the same lines of I.A.No.571 of 2014 to recall PW1 to confront certain documents. The Trial Court rightly dismissed his petition. I do not find any perversity or illegality therein.

8) The Civil Revision Petition is accordingly dismissed. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 30.01.2018
Murthy