

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.7359 OF 2018

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 05.11.2018 passed in I.A.No.551 of 2018 in O.S.No.44 of 2009 on the file of VI Additional District Court, Kurnool.

2. Heard the learned counsel for the petitioner.

3. A perusal of the record reveals that the respondent filed O.S.No.44 of 2009 on the file of VI Additional District Court, Kurnool, against the petitioner for recovery of an amount of Rs.61,21,337/- with future interest basing on the promissory notes. The petitioner filed written statement *inter alia* contending that the respondent has no capacity to lend money to him. After completion of PWs.1 and 2 evidence, the petitioner filed a petition to recall PWs.1 and 2 for cross-examination. The trial Court allowed the petition. At that stage, the petitioner filed I.A.No.551 of 2018 in O.S.No.44 of 2009, under Order VI Rule 17 C.P.C., seeking to amend the written statement. The respondent filed counter *inter alia* contending that the petition filed by the petitioner is not maintainable either on facts or in law. The trial Court, after affording a reasonable opportunity to both parties, dismissed the petition. Hence, the revision.

4. Learned counsel for the petitioner strenuously submitted that VI Additional District Court, Kurnool, has no territorial jurisdiction to entertain the suit.

5. The point that arises for consideration is:

“Whether there is any illegality, irregularity or impropriety in the impugned order?”

6. In order to appreciate the contention of the learned counsel for the petitioner, this Court scanned the written statement line by line. The petitioner has not taken a specific plea in the written statement that VI Additional District Court, Kurnool, has no territorial jurisdiction to entertain the suit. The petitioner has taken a specific plea in the proposed amendment petition that the suit promissory notes were fabricated at Hyderabad. Whatever pleaded by the petitioner was within his exclusive knowledge at the time of filing of the written statement. For the reasons best known, the petitioner did not take a specific plea in the written statement that VI Additional District Court, Kurnool, has no territorial jurisdiction to entertain the suit or promissory notes were fabricated at Hyderabad. A party to the proceedings is not entitled to seek amendment of the pleadings without satisfying the basic ingredients of proviso to Order VI Rule 17 C.P.C. after commencement of trial. This Court carefully perused the affidavit filed by the petitioner before the trial Court. There is no mention in the affidavit that despite due diligence, the petitioner could not take the plea of territorial jurisdiction in the written statement. On the other hand, the petitioner has taken a plea that his previous counsel has not properly drafted the written statement. Mere change of the advocate would not be a ground for filing of the petition under Order VI Rule 17 C.P.C. If the proposed amendment is allowed, it is nothing but introducing a new version, which is not permissible under law and which eventually affects

the rights of the respondent. The trial Court has assigned reasons much less cogent and valid reasons while dismissing the petition. I am fully endorsing with the findings recorded by the trial Court. There is no illegality, irregularity or impropriety in the impugned order warranting interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India.

7. In the result, the Civil Revision Petition is dismissed at the admission stage. There shall be no order as to costs.

8. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

Date: 13.12.2018
Ivd

T.SUNIL CHOWDARY, J

