

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. No.5389 of 2016

O R D E R:

Heard counsel for the petitioner. None appears for the respondents. Notice to respondent has been sent by RPAD and the track record shows that it has been delivered to him. Notice to respondent's counsel in the trial Court has also been served.

2. This Revision is filed assailing the order dated 26.09.2016 in I.A.No.598 of 2016 in O.S.No.890 of 2016 of VIII Junior Civil Judge, City Civil Courts, Hyderabad.

3. The petitioner is the defendant in the said suit which was filed by the respondent against him under Order 37 CPC for recovery of sum of Rs.1,89,000 (Rupees One lakh Eighty Nine Thousand) alleged to be lent by the respondent to the petitioner as a hand loan and alleging that the petitioner issued a cheque which got dishonored.

4. Petitioner sought leave to defend his case stating that he had no acquaintance with the respondent, that he had not borrowed any money from the respondent and that the cheque of the petitioner's Bank account was obtained through illegal means and was presented to petitioner's Bank without petitioner's knowledge. He also stated that he is a Government employee working in High Court and so he ought to be granted leave to defend.

5. By order dated 26.09.2016, the Court below while accepting that petitioner has a good defence and there is triable issue, permitted him to file a written statement on or before 13.10.2016 and while doing so directed him to furnish sureties for his claim and directed that if such sureties are not provided, I.A.No.598 of 2016 stands dismissed.

6. Assailing the same, this Revision is filed.

7. Counsel for the petitioner contends that as per proviso to Order 37 Rule 3(5) CPC, he is entitled to grant of leave once the Court below is satisfied that he has substantial defence to raise and if the said defence is not frivolous or vexatious, and so imposing condition asking petitioner to provide two sureties, is not warranted.

8. None appears for the respondents.

9. Having regard to the clear language of Order 37 Rule 3(5) CPC that the defendant cannot be refused to defend if he has a substantial defence and such defence is not frivolous or vexatious, and since the Court below had found that defence raised by the petitioner was a reasonable and good defence, the Court below could not have directed the petitioner to furnish sureties for the suit claim while allowing him to file written statement. More particularly, because the petitioner is a State Government employee and there would be no

difficulty to recover the suit claim in the event the suit is ultimately decreed against him.

10. Therefore order dated 29.06.2016 in I.A.No.598 of 2016 in O.S.No.890 of 2016 of VIII Junior Judge, City Civil Court, Hyderabad is set aside to the extent the Court below directed him to furnish sureties for the suit claim. Petitioner is granted two weeks time from the date of receipt of copy of this order to file written statement in the suit.

11. Accordingly, Civil Revision Petition is allowed. No order as to costs.

12. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

04.02.2019

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