

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

CRP. No.787 of 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.20.02.2019 passed in I.A. No.179 of 2019 in MVOP. No.799 of 2013 by the Principal District Judge at Khammam refusing to decide additional issue framed regarding the maintainability of claim against the petitioner in respect of death of the insured person as a preliminary issue.

2. Admittedly, the deceased died in a motor accident on 06.07.2011 and MVOP itself was filed on 08.04.2013 seeking compensation against the petitioner as well as respondents 5 and 6.

3. Admittedly, the evidence of the claimants has been completed and according to counsel for petitioner even the evidence of RW.1 has been completed.

4. The Court is almost at the final stage of the disposing of the OP. In the impugned order passed by the Court below, the Court below has also stated that the evidence on the side of the claimants was completed and the matter was coming up for the evidence of the petitioner and since the petitioner is also one of the parties and not the sole party in the OP., at this belated stage, the request of the petitioner to decide the maintainability as preliminary issue cannot be permitted.

5. Challenging the same, this Revision is filed.

6. Counsel for the petitioner contended that the Court below ought to have decided the issue of maintainability of O.P. against the petitioner as a preliminary issue since it is the case of the petitioner that the petitioner is not at all liable for payment of any compensation to the claimants in the O.P.

7. He also placed reliance on the judgments **S.Anjana Reddy Vs. Palvoi Ranga Reddy and others¹**, **A.Kanthamani Vs. Nasreen Ahmed²**, **A.Kanakalatha and others Vs. M.Shyam Sundher (died) per LRs and others³** and **Sejal Glass Limited Vs. Navilan Merchants Private Limited⁴**.

8. In all these decisions the Courts have emphasized that issues have to be framed in the suit and issues about the maintainability may have to be decided as a preliminary issue in certain circumstances setout therein.

9. There is no quarrel with the said proposition but the fact remains that in the instant case the application for deciding the maintainability of the suit as preliminary issue has been filed on 04.02.2019, almost six years after filing of the OP., at the stage when OP nearing its completion, and when the evidence on the side of the claimants and that of RW.1 has been completed and the petitioner has to lead evidence.

¹ 2017 (3) ALD 260

² (2017) 4 Supreme Court Cases 654

³ 2018 (6) ALT 296

⁴ (2018) 11 Supreme Court Cases 780

10. In these facts and circumstances, I feel that this application filed by the petitioner itself is vexatious and cannot be entertained since any way the Court will decide the issue of maintainability on which a specific issue had already been framed in I.A. No.179 of 2019 at the request of the petitioner.

11. Therefore, this Revision fails and is dismissed with costs of Rs.5,000/- (Rupees five thousand only) to be paid to the High Court Legal Services Committee in four (04) weeks from the date of receipt of copy of this order. There shall be no order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 14.06.2019
LSK