

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.1007 of 2019

ORDER:

This Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.18.03.2019 passed in I.A. No.397 of 2018 in O.S. No.15 of 2015 by the IX Additional District Judge, Wanaparthy.

The petitioner herein is the defendant in the said suit. The respondent filed the said suit against the petitioner for recover of money on 22.06.2015 on the ground that the amount was paid as part consideration for sale of land by the petitioner to the respondent on 30.01.2013 and 07.03.2013.

Written statement was filed opposing the suit claim stating that the agreement of sale on the basis of which the property was agreed to be sold to the petitioner was cancelled on account of non payment of balance amount in time. It was contended that the claims of refund of the amounts by the respondent is barred by limitation. Apart from that it was also contended that there was no stipulation in the suit agreement that in the event of failure on the part of the petitioner in executing registered sale deed, plaintiff can ask for refund of amount already paid with interest.

Later, the plaint was amended by filing I.A. No.263 of 2017, which was allowed on 22.08.2018, taking the plea that the amounts paid on 30.01.2013 and 07.03.2013 relate to purchase of stone by the respondent from the petitioner under the separate agreement dt.07.03.2013 and the said payment did not pertain to the suit agreement.

After the trial commenced and the evidence of the respondent was completed, the petitioner sought to file an agreement dt.07.03.2013 relating to sale of granite stones and copy of Assistant Geologist report with fine challan through covering letter dt.14.07.2014 by filing I.A. No.397 of 2018 on 27.09.2018.

In the affidavit filed in support of the application he merely stated that the said documents were not filed earlier as they had been misplaced and traced recently.

Counter was filed by the respondent opposing the said application and raising the plea that the documents are forged and fabricated after the written statement was amended. It is also pointed out that if these documents were in the custody of the petitioner, petitioner should explain why he with-hold the said documents and leave should be denied because the evidence of the respondent had already been completed.

By order dt.18.03.2019, the Court below dismissed the said application. It observed that evidence on the side of the respondent had been closed on 12.06.2018 and two months later, the petitioner had filed the application to amend the written statement, and after same was allowed on 22.08.2018, he waited for one more month to file I.A. No.397 of 2018. It held that the said documents had been confronted to P.W.1 also when he was cross-examined by the petitioner on 28.02.2018, and no valid reason was assigned why he did not file these documents along with the neat copy of plaint which was filed on 04.01.2018.

Assailing the same, this Revision is filed.

Though counsel for the petitioner contended that what was confronted to P.W.1 was photo copy of the said documents, there is no mention of the same in the impugned order.

So it appears that the petitioner had custody of both the documents all through and since he had already confronted the same to P.W.1, his plea that the documents were misplaced and traced later was a false plea.

So it cannot be said that petitioner had exercised due diligence earlier.

Also the respondent could be seriously prejudiced if the documents are now allowed to be brought on record since the evidence of the respondent had already been closed. I therefore do not find any merit in this Revision.

Accordingly, this Revision Petition is dismissed. There shall be no order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 03.06.2019
LSK