

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

C.R.P.No.3063 of 2018

O R D E R:

Heard counsel for petitioner and the counsel for respondent.

2. This Revision is filed by the petitioner assailing the order dt.03.05.2018 in O.S.No.1246 of 2016 of the XXI Junior Civil Judge, City Civil Court, Hyderabad.

3. Petitioner is the defendant in the above suit.

4. Respondent filed the said suit against the petitioner for recovery of money with interest in relation to certain mobile telephone services provided by the respondent to the petitioner which are alleged to be not paid by the petitioner.

5. Initially, only two issues were framed on 17.10.2016. But subsequently, on a request made by the petitioner, 10 more issues were framed by the Court below on 03.08.2017.

6. Thereafter, petitioner filed I.A.No.469 of 2017 to decide the following three issues as preliminary issues:

- “a) Whether this Court has got jurisdiction to try the suit?
- b) Whether the suit is barred by time factor?
- c) Whether the plaintiff has got the cause of action to file this suit? “

7. Counter was filed by the respondent stating that the petitioner was intending to delay the matter by filing frivolous petitions and that the petitioner availed the services of the respondent but failed to pay the amounts.

8. By order dt.03.05.2018, the Court below dismissed the said I.A. It opined that if the petitioner wanted the said three issues to be decided as preliminary issues, he should have filed the petition at the time of filing written statement, but he did not do it; even when he filed the application I.A.No.287 of 2016 to frame additional issues, he did not ask the Court to decide the above said three issues as preliminary issues; and when the matter is coming up for trial, he filed the present application only to drag on the matter and to delay the trial in the suit.

9. Assailing the same, this Revision is filed.

10. Though counsel for petitioner sought to contend that the Court below ought to have proceeded to decide the said three issues as preliminary issues and expressed its opinion thereon, the fact remains that the suit is of the year 2016 and after framing of issues twice, it is now posted for trial. Already more than two years have elapsed since the filing of the suit, and further delay in conduct of trial would delay the disposal of the suit. Therefore the petitioner cannot find fault with the Court below in refusing to decide the said issues as preliminary issues, particularly, when the issues now sought to be raised, such as the one relating to limitation, would be mixed question of fact and law and may require evidence to be adduced by the parties.

11. I therefore do not find any error of jurisdiction in the order passed by the Court below warranting interference of this Court under Article 227 of the Constitution of India.

12. Accordingly, this Civil Revision Petition fails and it is dismissed. No order as to costs.

13. Consequently, Miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

19th February, 2019.

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