

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.3691 of 2018

ORDER :

Heard the learned counsel for petitioners and Sri B.Chandrasen Reddy, learned Counsel for respondent.

2. This Revision is filed challenging the order dt.20-03-2018 in I.A.No.13 of 2018 in O.S.No.1078 of 2008 of the Principal District Judge, Ranga Reddy District at L.B. Nagar.

3. Petitioners are defendants in the suit.

4. The respondent filed the said suit against petitioners for specific performance of a contract to prolong lease of the subject property on enhanced monthly rental and other reliefs.

5. Written statement was filed by petitioners disputing the suit claim and raising a counter-claim as under:

“14. For all the reasons mentioned herein above it is submitted that the suit as filed by the plaintiff is absolutely devoid of merits and deserves to be dismissed with exemplary costs by allowing the counter claim in a sum of Rs.55,22,459/- in favour of the defendant with subsequent interest @ 18% p.a. or such other rate as deemed fit and proper by this Hon’ble Court from the date of this counter claim till realization.”

6. Later certain amendments were carried out to the plaint, for which additional written statement was filed by petitioners.

7. In the additional written statement, in the last para, the following prayer is made:

“Therefore, the defendant No.2 prays that this Hon’ble Court may be pleased to dismiss the suit of the plaintiff; decree the counter-claim of the defendants directing the plaintiff to refund the security deposit amount along with interest @ 18% per annum from the date of filing of the suit till realization and award cost of the litigation.”

8. Respondent filed I.A.No.13 of 2018 to delete paragraphs 2, 3 and 4 and prayer portion in the additional written statement as the petitioners filed counter-claim without leave of the Court.

9. Counter-affidavit was filed by petitioners opposing the said application and stating that Order VI Rule 16 C.P.C. has no application.

10. By order dt.20-03-2018, the Court below refused to delete paragraphs 2, 3 and 4. It observed that the last paragraph of the additional written statement seeking relief by way of counter-claim is not maintainable as no leave was sought for filing counter-claim, and it deleted the following portion in the last paragraph of the additional written statement:

“6. ... Decree the counter claim of the defendants directing the plaintiff to refund the security deposit amount along with interest @ 18% per annum from the date of filing of the suit till realization and award cost of the litigation.”

11. Challenging the same, this Civil Revision Petition is filed.

12. Learned counsel for petitioners contends that the written statement originally filed itself contained a counter-claim and it is not a case of counter-claim being made for the first time along with additional written statement and the Court below erroneously appears to have presumed that counter-claim was being made for the first time along with additional written statement and passed the impugned order.

13. Learned counsel for respondent does not dispute that costs were sought by petitioner/defendant No.2 in the original written statement along with counter-claim also. The Court below appears to have presumed that counter-claim was being sought by petitioners for the first time along with additional written statement and refused to allow the claim for counter-claim.

14. However, it is to be noted that in the original counter-claim filed by petitioners the interest claim was only from the date of counter-claim till realization, whereas in the additional written statement in the last paragraph the claim of interest was made from the date of filing of the suit.

15. To the extent that the petitioners sought for interest on the counter-claim from the date of filing of suit, the plea in additional written statement cannot be entertained and therefore the counter-claim for interest from the date of filing of counter-claim till realization only can be gone into in the suit.

16. As regards the costs also, they were directed to be deleted by the Court below by the impugned order. In the original written statement also exemplary costs were sought. Therefore that aspect would still remain for consideration in the suit.

17. Accordingly, the Civil Revision Petition is allowed, and it is clarified that counter-claim of petitioners seeking amount of Rs.55,22,459/- with subsequent interest @ 18% p.a. or such other rate as deemed fit and proper by the Court below from the date of counter-claim till realization and the claim for exemplary costs thereafter have to be gone into in the suit by the Court below. No costs.

18. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 17-06-2019

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