

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

C.R.P. No.5303 of 2018

ORDER:

Heard the Senior counsel, Sri Vedula Venkataramana, representing Sri M.A.K. Mukheed, counsel for the petitioner on record, and Sri M.Sivananda Kumar for the respondents.

2. This Revision Petition is filed challenging the order dt.17.08.2018 passed in I.A. No.1584 of 2018 in O.S. No.223 of 2012 by the Principal District Judge at L.B.Nagar, Ranga Reddy District.

3. The petitioner herein is the plaintiff in the said suit. He filed the said suit for specific performance of an agreement of sale dt.05.12.2010 allegedly executed by the respondents 1 and 2 in his favour agreeing to sell the suit schedule properties to him for a sum of Rs.3,00,00,000/- to which the father of the respondents was a witness. There is also a pleading of payment of Rs.1,00,00,000/- to the respondents 1 and 2 as advance and part of sale consideration and subsequent payment of Rs.2,00,00,000/- under receipt dt.05.03.2011 and 05.05.2011.

4. Respondents 1 and 2 then filed a written statement denying that they offered to sell the plaint schedule properties to the petitioner for a consideration of Rs.3,00,00,000/- and also denied the receipt of any consideration thereunder. They only contended that as and when their father requested them to sign on some papers, they signed the same without knowing the consequences. They also contended that payment

of Rs.3,00,00,000/- in cash is unbelievable and the suit agreement of sale is unsufficiently stamped.

5. Thereafter, issues were framed and trial was commenced and the petitioner examined P.Ws.1 and 2 and respondents cross-examined D.Ws.1 and 2.

6. At that stage, the respondents filed I.A. No.1584 of 2018 invoking Section 151 CPC requesting the Court to receive an additional written statement.

7. It is their contention that after filing of the written statement dt.27.06.2012 by them, there was a compromise between their father and the petitioner under which a sum of Rs.1,50,00,000/- was paid in cash under Ex.B1 dt.18.02.2014; that the said receipt was given by their father on their behalf and in their names, and that this agreement was entered into in the presence of D.Ws.2 and 3. It is also pleaded that their father gave 2 cheques for Rs.1,50,00,000/- and Rs.1,30,00,000/- to the petitioner. They also contended that the respondents could trace out the Photostat copy of receipt cum agreement i.e. Ex.B1 dt.18.02.2014 and the same was confronted to P.W.1, that he admitted his signatures thereon, and they had examined D.Ws.2 and 3 to prove the contents of Ex.B1 dt.18.02.2014. They contended that because of the subsequent events which have a bearing on the suit transaction, and to show that the suit claim is not meant to act upon and it is only a security arrangement with their father,

they were advised to file additional written statement to bring these facts on record.

8. Counter affidavit was filed by the petitioner opposing the said application and contending that in the original written statement there was no mention about the alleged transaction between himself and the father of the respondents. The petitioner denied all the allegations levelled in the affidavit filed along with the I.A. No.1584 of 2018 and sought dismissal of the said application. The petitioner denied receiving a cheque under Ex.B1 and signing on it in the presence of D.Ws.2 and 3. The petitioner admitted receiving cheque dt.01.03.2014 for Rs.1,50,00,000/- and cheque dt.01.04.2014 for Rs.1,30,00,000/- from the father of the respondents.

9. By order dt.17.08.2018, the Court below allowed the said application. It observed that the original written statement had been filed on 27.06.2012, but Ex.B1 is dated 18.02.2014, which is 1½ years after filing of the original written statement; and there would be no scope for the respondents to raise the plea with respect of Ex.B1 at the time of filing of the initial written statement. It also rejected the contentions of the petitioner that the respondents are taking inconsistent pleas and pointed out that the respondents had denied the suit transaction from the beginning and there is no new stand being taken except a compromise between the petitioner and the father of the respondents after filing of the written statement.

10. Assailing the same, this Revision is filed.

11. Counsel for the petitioner contended that there are inconsistent pleadings raised by the respondents in the additional written statement and in the initial written statement and the Court below cannot permit the same to be brought on record by way of an additional written statement.

12. I am unable to agree with the said contention because the transaction, as pleaded in the plaint, was denied in the original written statement and the same stand continued in the additional written statement but there is now a reference to an event which occurred on 18.02.2014 after filing of the written statement. This being a subsequent event, which has direct bearing on the suit transaction, it has to be permitted to be brought on record by receiving the additional written statement. There was also no scope for the respondents to mention about this event in the original written statement since the event had not occurred at the time when it was filed.

13. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court in exercise of power under Article 227 of the Constitution of India.

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

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 22.04.2019
LSK

