

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. Nos.7688 and 7655 of 2018

COMMON ORDER:

These two Revisions arise out of the same suit between the same parties and so they are being disposed of by this common order.

2. Petitioner in both these Revisions is defendant in O.S.No.396 of 2013 on the file of the Chief Judge, City Civil Court, Hyderabad.

3. The respondent filed the said suit against petitioner for recovery of some money for supply of bitumen said to have been made to petitioner by respondent on the request of petitioner.

4. Written statement was filed opposing the suit claim contending that petitioner used to purchase bitumen from respondent/plaintiff through one G.L. Narasimha Rao, who is respondent's supplier and except through the said person, there is no direct supply of said material from respondent to petitioner. It is also contended that the said G.L. Narasimha Rao is respondent's supplier, that he used to collect amount from the petitioner from time to time and he had even issued a letter to petitioner that the petitioner was not due any amount.

5. After trial commenced, the petitioner/defendant filed I.A.No.3064 of 2018 to implead the said G.L. Narasimha Rao as 2nd defendant in the suit, and I.A.No.3374 of 2018 under Order VI Rule 17 C.P.C. to permit the respondent to amend the written statement by taking additional pleas relating to the transaction.

6. By common order dt.23-11-2018, both the applications were dismissed by the Court below. The Court below held that the suit had been filed in 2013 and cross-examination of P.W.1 was done partly, and at that stage, applications to implead and amend the written statement were filed. It held that written statement was filed by petitioner on 19-04-2016 and no valid reasons have been given for the delay in seeking amendment of the written statement. It also observed that the said G.L. Narasimha Rao is not a necessary and proper party to the suit.

7. Assailing the same, these two Revisions are filed.

8. Heard Sri V.Srinivas, learned counsel for petitioner and Sri Mahesh Raje, learned counsel for respondent.

9. Since admittedly trial in the suit had already commenced by the time application I.A.No.3374 of 2018 for amendment of written statement was filed, and there is no pleading in I.A.No.3374 of 2018 that petitioner had exercised due diligence but in spite of the same, the petitioner could not seek amendment before the trial commenced, I do not find any error of jurisdiction in the order passed by the Court below in rejecting I.A.No.3374 of 2018.

10. Accordingly, C.R.P.No.7688 of 2018 is dismissed.

11. Coming to C.R.P.No.7655 of 2018 wherein the order in I.A.No.3064 of 2018 dismissing it is challenged, since there is a specific pleading of the petitioner in the written statement filed by him about the role of the said proposed party G.L. Narasimha Rao,

it cannot be said that the said person is not a proper party to the suit, though he may not be a necessary party since no relief is sought against him. Therefore the Court ought to have allowed I.A.No.3064 of 2018 instead of dismissing it.

12. Therefore, C.R.P.No.7655 of 2018 is allowed, the order dt.23-11-2018 in I.A.No.3064 of 2018 in O.S.No.396 of 2013 is set aside, and the said I.A. is allowed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 13-09-2019
Vsv

