

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

CIVIL REVISION PETITION No.1760 of 2023

ORDER:

The respondent herein had filed O.S.No.177 of 2016 before the Learned VIII Additional District Judge, Eluru for recovery of a sum of Rs.17,18,000/- from the petitioners herein, on the ground that they had taken a loan of Rs.10,00,000/- to be repaid with interest and had also executed a promissory note to that effect on 29.12.2013. The respondent took the plea that the said amount was not paid when a demand was made and that the respondent had to approach the Court for recovery of the said money.

2. The petitioners herein had filed a written statement stating that they had never executed any promissory note nor taken a loan of Rs.10,00,000/-. The petitioners also stated that they had taken a loan of Rs.1,00,000/- along with their father and had executed a simple mortgage deed in favour of the respondent as security for repayment of the

said sum of Rs.1,00,000/-, which was repaid subsequently. The petitioners contended that the respondent after receiving the said amount had not executed the mortgage release deed and had created the suit pro-note for filing a false suit. The petitioners referred to pendency of two suits being O.S.No.96 of 2016 and O.S.No.229 of 2016 before the Learned Senior Civil Judge, Tadepalligudem for relief of specific performance of an agreement.

3. In the course of the suit, the respondent had filed his affidavit in lieu of chief examination for commencement of trial. At that stage, the petitioners moved I.A.No.498 of 2023 for amendment of their written statement. The proposed amendment sought to insert paragraph-6 (A) in the written statement. This paragraph contained statements about the incapacity of the respondent to lend a sum of Rs.10,00,000/- and the circumstances in which the loan of Rs.1,00,000/- was taken and the manner in which the mortgage deed had been executed. An additional

plea of the petitioners not being available in the locality when the said pro-note is said to have been signed was also raised.

4. This application was dismissed by the Trial Court, by an order dated 13.06.2023.

5. The Trial Court, after hearing both sides, had dismissed the application on the ground that the proviso to Order VI Rule 2, prohibits amendment of written statement after commencement of trial and also on the merits of the case. The Trial Court had taken the view that the proposed amendment was introducing a totally new case and a case which is contrary to the earlier pleadings.

6. Aggrieved by the said order, the petitioners have approached this Court.

7. Heard Sri Sai Gangadhar Chamorthy, learned counsel for petitioners and Sri Yallabandi Ramatirtha, learned counsel for the respondent.

8. Sri Sai Gangadhar Chamorthy, learned counsel would rely upon the judgement of the erstwhile High Court of Andhra Pradesh reported in ***Brij Gopal Pallod and others vs. Municipal Council rep by G. Vasudeva Reddy, Asst. Executive Engineer, Zaheerabad Municipality, Medak District***¹ to contend that mere filing of an affidavit in lieu of chief examination would not amount to commencement of the trial in the suit and that the said filing of the affidavit in lieu of chief examination would not bar the filing of an application for amendment of the pleadings.

9. He would further submit that the defendant is always entitled to take contradictory stands in the written statement and in any event the amendment only seeks to give further details relating to the basic stand taken by the petitioners that they had not executed any pro-note and the only transaction between them and the respondent was

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a loan transaction of Rs.1,00,000/- for which a simple mortgage deed had been executed by them.

10. Sri Yallabandi Ramatirtha, learned counsel for respondent would submit that the filing of the affidavit in lieu of chief examination by the respondent has essentially crystallized the case of the respondent and any amendment at this stage would prejudice the rights of the respondent. He would further submit that the amendment sought by the petitioners would amount to setting up of a fresh and totally different case as opposed from the version set out in the original written statement. He would further submit that the order of dismissal of the Trial Court is appropriate in the circumstances and does not require any interference by this Court.

11. In view of the Judgment cited by Sri Sai Gangadhar Chamarthy, learned counsel, it cannot be held that the bar under the proviso of Order VI Rule 2 would come into play.

12. As far as the question of merits of the amendment is concerned, it would always be appropriate to permit parties to put forth their case and any amendment necessary for such purposes should be viewed liberally. However, this would not mean that any such amendment can prejudice the rights of the respondent.

13. In the present case, the respondent had already filed his affidavit in lieu of chief examination on the basis of their written statement filed by the petitioners. In such circumstances, it would be necessary to protect the interests of the respondent also.

14. This Court is of the view that the amendment sought by the petitioners is not outside the scope of an application for such an amendment in Order VI Rule 2 and it would be appropriate to permit the petitioners to set forth their entire case before the trial when the matter commences. At the same time, the respondent cannot be made to stick to the affidavit filed in lieu of chief examination when there has been an amendment to the written statement and the

respondent would be entitled to file a fresh affidavit in lieu of chief examination.

15. In the circumstances, this Civil Revision Petition is allowed permitting the amendment sought by the petitioners, subject to the condition that the respondent shall be entitled to file a rejoinder to the said amended written statement. Further, it would be open to the respondent to eschew the affidavit filed in lieu of chief examination and to file a fresh affidavit in lieu of chief examination after filing the rejoinder, if any. There shall be no order as to costs.

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

R. RAGHUNANDAN RAO, J

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