

**HON'BLE SRI JUSTICE S. RAVI KUMAR**

**CIVIL REVISION PETITION No.89 of 2015**

**ORDER:**

This revision is filed against order dated 10.11.2014 in O.S.No.119 of 2012 on the file of II Additional District Judge, West Godavari District, Eluru.

2 . Revision petitioner herein is defendant in the above referred O.S.No.119 of 2012, which is filed for recovery of money. In the said suit, trial has commenced and at the time of cross-examination of PW.1, advocate for plaintiff objected for putting certain questions with regard to registration of the firm and capacity of PW.1 to file the suit and that objection was upheld by the trial Court and that order is now under challenge.

3. On 27.02.2015, this Court permitted petitioner to take out personal notice to respondent through Registered post with acknowledgment due and file proof of service. Advocate for petitioner filed Memo on 16.03.2015 stating that in pursuance of order dated 27.02.2015, he has issued notice to respondent through registered post with acknowledgment due and served postal acknowledgment is filed along with memo. As seen from the postal acknowledgment and the receipt notice was sent on 06.03.2015 and respondent received the same as per postal acknowledgment.

5. Heard advocate for revision petitioner. None appeared on behalf of respondent.

6. Advocate for revision petitioner submitted that suit is filed by firm and along with suit firm registration certificate is not filed. Only after PW.1 entered into witness box that too after his cross examination was deferred, firm registration certificate is marked on 26.09.2014 as Ex.A12. He submitted when PW.1, stated in the cross examination that firm was closed by the date of filing of the suit, opposite advocate i.e., plaintiff advocate opposed for putting such questions on the ground that there is no specific pleading with regard to registration and capacity of PW.1 for filing suit and the trial Court upheld that objection. He submitted that when PW.1 admitted that by the date of filing of the suit the firm was not in-existence, it requires further clarification, and for that

reason only, other questions are put, but objection of other side is upheld on the ground of no plea in the written statement.

7. I have perused the material papers and also impugned order. As seen from the evidence of PW.1, firm registration certificate is only filed on 26.09.2014 after completion of chief examination, and in the cross-examination, it was elicited that by the date of filing of the suit, the firm was closed. As seen from the written statement, defendant denied allegation that plaintiff is a registered firm, therefore it is incumbent on the plaintiff to first establish that plaintiff is a firm and it has legal existence as on the date of filing of suit. When in the cross examination, a specific admission is made as to the non-existence of the firm, as on the date of filing of suit, as rightly pointed out by advocate for revision petitioner, it requires some further clarification like the details of date of closure of the firm, partners of the firm etc., and so also the capacity of PW.1 and his status in the firm as on the date of filing of suit. But the trial judge upheld the objection of plaintiff on the ground that there is no issue touching the maintainability of the suit. As rightly pointed out by advocate for revision petitioner further cross-examination of witness with regard to firm has occasioned only because of the answer given by witness as to the non-existence of the firm as on the date of filing of suit. The purpose of cross-examination is to elicit truth and for doing such exercise, sometimes it may require to put some questions, which are not disclosed in the defence. Therefore, the trial Court ought to have visualized the situation of non-existence of the firm as on the date of suit and ought to have allowed defendant to further clarify the facts for deciding the *lis* between the parties.

8. For these reasons, I am of the view that trial Court erred in curtailing the cross-examination of PW.1, and as such, order of the trial Court is liable to be set aside.

9. Accordingly, the Civil Revision Petition is allowed and impugned order dated 10.11.2012 is set aside. The trial Court is directed to permit revision petitioner herein to cross-examine the witness by putting questions relating to the extent of registration of firm and capacity of PW.1 for filing suit on behalf of firm. No costs.

Miscellaneous petitions, if any pending, in this revision petition shall

stand closed.

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**S. RAVI KUMAR, J**

Date: 24.03.2015

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