

**THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY**

**C.R.P.No.6012 OF 2018**

**ORDER:**

This civil revision petition under Article 227 of the Constitution of India is directed against the order dated 02.08.2018 in I.A.No.72 of 2018 in O.S.No.71 of 2012, on the file of the VII Additional District Judge, Mahabubnagar, wherein the said application filed by the petitioner (defendant No.1), under Order VIII Rule 9 read with Section 151 of the Civil Procedure Code (in short, 'CPC') seeking to grant leave to file additional written statement, was dismissed.

2. Heard learned counsel for the petitioner as well as learned counsel for the respondent No.2. None appeared for respondent No.1. Perused the record.

3. Respondent No.1/plaintiff filed the suit O.S.No.71 of 2012 for specific performance of agreement of sale dated 22.03.2012 against the petitioner/defendant No.1 and respondent No.2/defendant No.2. Defendant No.1 filed written statement. While so, the revision petitioner filed an application in I.A.No.72 of 2018

under Order VIII Rule 9 read with Section 151 CPC seeking to grant leave to file additional written statement. Respondent No.1/plaintiff reported no counter, while respondent No.2 filed counter affidavit *inter alia* denying the allegations in the petition. On a consideration of the material on record, the trial Court dismissed the said application vide orders dated 02.08.2018. Challenging the orders, the present revision is filed.

4. Learned counsel for the petitioner submits that the trial Court committed error in not giving opportunity to the petitioner to file additional written statement and filing of the same would neither change the nature of the suit nor the relief prayed and no prejudice would be caused to the case of the plaintiff. Learned counsel prayed to set aside the impugned order and permit the petitioner to file additional written statement.

5. *Per contra*, learned counsel for respondent No.2, while supporting the impugned order, submits that the trial Court had rightly held that by way of additional written statement, the categorical admissions made by the revision petitioner in the earlier written statement can be taken away and he is not entitled to take a

divergent stand by filing additional written statement.

In support of his contentions and submissions, learned counsel placed relied on the decision of the Hon'ble Apex Court in

**RAM NIRANJAN KAJARIA v. SHEO PRAKASH KAJARIA AND OTHERS<sup>1</sup>**.

6. Thus, on hearing the submissions of both the learned counsel and on perusing the material on record, the only question that arises for consideration is – whether the impugned order is sustainable in law?

7. Admittedly, the revision petitioner had filed written statement in the suit on 02.11.2012. The present application is filed seeking leave of the Court to file additional written statement. In the affidavit filed in support of the application, the revision petitioner pleaded that in the written statement filed on 02.11.2012, certain incorrect facts have been incorporated without his knowledge. The main averments are that the defendant No.2 fraudulently obtained gift deed in his name. The petitioner was illegally confined for a period of three weeks under threat and his

---

<sup>1</sup>(2015) 10 SCC 203

signatures were taken on some stamp papers and blank papers. It is further averred that the written statement filed by him in the suit was engineered by defendant No.2. The revision petitioner further pleaded that he executed a registered gift deed in favour of defendant No.2 and it was obtained fraudulently. Under these circumstances, he was advised to file additional written statement to bring the above said facts before the Court.

8. Prior to deciding the above revision petition, it is necessary to see what is the law on the subject, as contemplated under Order VIII Rule 9 of the Civil Procedure Code. Order VIII Rule 9 of the Civil Procedure Code reads:

9. Subsequent Pleadings: No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off or counter-claim shall be presented except by the leave of the court and upon such terms as the court thinks fit, but the court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.

Thus, the Rule says that other than by way of defence to a set-off or counter-claim, only with the leave of the court pleading

subsequent to the written statement shall be presented and it is up to the court to decide and if it thinks fit, it could allow the presentation of the subsequent pleading of the defendant. In the case on hand, only in compliance of the Rule, the petitioner had filed the above interlocutory application seeking leave of the trial court to receive the additional written statement on grounds as alleged in the affidavit filed in support of the petition.

9. In **M/s MODI SPINNING AND WEAVING MILLS v. M/s LADHA RAM & CO.**,<sup>2</sup> it is held that by means of amendment the defendants wanted to introduce an entirely different case and if such amendments were permitted, it would prejudice the other side. What is to be decided, in the light of the above proposition of the Apex Court, by the court dealing with the subject is to find out whether the defendant wants to introduce an entirely different case so as to prejudice the other side, provided he is permitted to carry out the amendments.

---

<sup>2</sup>1977 AIR SC 680

10. So far as the order of the Court below is concerned, it is observed that the additional written statement sought to be filed is contradictory to the earlier written statement filed by the petitioner. Apart from that, the trial Court observed that on a perusal of the written statement proposed to be filed by the petitioner, the petitioner intends to take away his categorical admissions in the pleadings which are judicial admissions under Section 58 of the Indian Evidence Act. Therefore, it is clear that the petitioner is not entitled to take a divergent stand by filing additional written statement. The trial Court had given proper reasons for rejecting permission to grant leave to file additional written statement which is contradictory to the earlier written statement.

11. A careful perusal of the affidavit filed by the petitioner in support of the application as well as the proposed additional written statement now sought to be filed, the pleadings categorically show that total contradictory stand has been taken by the revision petitioner than what was pleaded in the earlier written statement. It is quite evident that the present application is filed in February, 2018 and the impugned order is dated 02.08.2018,

whereas the written statement was filed by the petitioner on 02.11.2012. After a gap of six years, the revision petitioner has come up with the application, taking a contradictory stand than what was pleaded in the written statement filed earlier on 02.11.2012.

13. In the judgment in **RAM NIRANJAN KAJARIA**'s case, (1 supra) relied on by learned counsel for respondent No.1, the Hon'ble Apex Court while considering "whether a defendant in a suit for partition can be permitted to withdraw an admission made in the written statement after a pretty long period, is the issue arising for consideration in the present case, observed at para 18 as under:

"The learned Counsel appearing for the appellant mainly referred to three Judgments of this Court. In *Modi Spinning and Weaving Mills Co. Ltd. v. Ladha Ram & Co*, it was held as follows at Paragraph-10:

"It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paras 25 and 26 is not making inconsistent and alternative pleadings but it is seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. If such amendments are allowed the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. The High Court rightly rejected the

application for amendment and agreed with the trial court.”

14. In the light of the above judgment, the inconsistent pleas taken by the revision petitioner would certainly displace respondent No.1/plaintiff completely from the admissions made by the revision petitioner in his written statement and if such amendments are allowed, respondent No.1 would be put to prejudice. Apart from that, contradictory and inconsistent stands cannot be permitted to be taken by filing additional written statement completely against the stand taken in the earlier written statement and permitted to introduce a new plea. Further, the admissions in the pleadings of the written statement filed by the revision petitioner are admissible under Section 58 of the Evidence Act and the same was rightly observed by the trial Court.

15. For the foregoing reasons, I am of the view that the trial Court had rightly dismissed I.A.No.72 of 2018 filed seeking to grant leave to the revision petitioner to file additional written statement, with valid reasons. I do not find any irregularity or infirmity in the order of the Court below warranting interference by



this Court in exercise of powers under Article 227 of the Constitution of India.

16. In the result, the civil revision petition is dismissed. There shall be no order as to costs.

17. Pending miscellaneous petitions, if any, shall stand closed.

---

**A.SANTHOSH REDDY, J**

27.02.2023

*Lrkm*

*LR copy*