



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3332]

FRIDAY, THE THIRTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI

CIVIL REVISION PETITION NO: 1003/2024

Between:

1.M/S MAHESH AGENCIES, PARTNER FIRM, REPRESENTED BY ITS PARTNER VINOD KUMAR RATHI S/O SHRI BRIJGOPAL RATHI, AGED 51 YEARS, OCC BUSINESS, HAVING REGISTERED HEAD OFFICE AT H. NO. 13-6-434/A/1/1, PILLAR NO. 82, MARUTI NAGAR, RING ROAD, HYDERABAD - 500 064. BRANCH OFFICE AT H. NO.4-38-3-1 BALAJI NAGAR, KURNOOL ANDHRA PRADESH.

...PETITIONER

AND

1.M/S SS AUTOMOBILES, Represented by Authorised representative Having office at H. No. 6-336, Naksha Bandi Yaj Complex, Opp MG Brothers, Bellary bypass Road, Anantapur, Andhra Pradesh - 515 001

...RESPONDENT

Petition under Article 227 of the Constitution of India,praying that in the circumstances stated in the grounds filed herein,the High Court may be pleased topleased to set aside Order dated 07-04-2022 passed in IA.No.74 of 2022 in OS.No.3 of 2022 on the file of the Principal Senior Civil Judge, Kurnool, consequently dismiss the said IA.No.74 of 2022 with costs, and to pass

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to suspend the impugned Order dated 07-04-2022 passed in

IA.No.74 of 2022 in OS.No.3 of 2022 on the file of the Principal Senior Civil Judge, Kurnool, pending disposal of the main CRP No.1003 of 2024, and to pass

Counsel for the Petitioner:

1.ASHOK KONDETI

Counsel for the Respondent:

1.LAKSHMIKANTH REDDY DESAI

The Court made the following:

ORDER:

The petitioner is the plaintiff and respondent is the defendant. The petitioner/plaintiff got filed a suit vide in O.S.No.3 of 2022 on the file of Principal Senior Civil Judge, Kurnool for recovery of money to a tune of Rs.25,55,661/-. In the said suit, the defendant/respondent herein filed an interlocutory application vide in I.A.No.74 of 2022 under Order XXXVII Rule 3 r/w Section 151 of CPC praying the Court to permit the defendant to defend the case by filing his defence. The said application was opposed by the plaintiff by filing counter denying the allegations, inter alia contending that the grounds raised in the application are hyper-technical and that the defendant ought to have specifically pointed out the details of payment made, part-payments made and returns, which were not incorporated in the account statement filed by the plaintiff and which are required to be considered as per the claim of the defendant. Accordingly, prayed to dismiss the application. After hearing the parties, the trial Court allowed the said application under its order dated 07.04.2022. Feeling aggrieved thereby, the present civil revision petition is filed.

2. Heard Sri Ashok Kondeti, learned counsel for the petitioner and Sri Lakshmi Kanth Reddy Desai, learned counsel for the respondent through virtual mode.

3. Learned counsel for the petitioner, while reiterating the contents of the counter filed in the interlocutory application and grounds of revision, submitted that the trial Court failed to see the purport of Order XXXVII Rule 3 of CPC,

particularly proviso to sub-rule (5), in a right perspective. The defendant himself admitted in his affidavit filed in support of the interlocutory application at para-9 that some part-payments were made and that the same were not stated by the plaintiff in the plaint. When such is the situation, sub-rule (5) of Order XXXVII clearly envisages that the Court should put the defendant on condition before granting leave to defend. As such, the order impugned is erroneous and liable to be set aside.

4. On the other hand, learned counsel for the respondent submitted that the trial Court has rightly taken into consideration the facts and circumstances of the case. If this Court comes to conclusion that the trial Court failed to impose any condition, a direction may be given to the trial Court to dispose of the suit itself in a time-bound manner. He further contended that the respondent/defendant requested to put forth his defence in the suit and contest the same, and the trial Court has rightly granted such permission, as the issues in the suit are triable. No valid grounds are raised warranting interference of this Court and prayed to dismiss the Civil Revision Petition.

5. Perused the record and considered the submissions made by both the learned counsel.

6. The petitioner/plaintiff filed a suit for recovery of money. The defendant filed interlocutory application duly praying the Court to permit him to defend the case by filing his defence in the suit. It was contended in the said application that the plaintiff had not considered the payments made, part-payments made and returns, and filed the suit without mentioning the same.

The said averments clearly envisage that certain amounts were cleared towards outstanding due to the plaintiff. Even then, the defendant did not mention what was the amount that has to be repaid to the plaintiff.

7. The contention of the petitioner herein is that, when such is the case, the trial Court ought to have imposed a conditional order while granting leave to defend by virtue of Order XXXVII Rule 3(5) proviso, which reads as follows:-

“...Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.”

8. As stated supra, when certain amounts have been admitted by the respondent/defendant in the affidavit, the trial Court failed to see the said proviso in a right perspective and granted leave to defend the suit unconditionally. This Court, instead of adjudicating as to what was the admitted amount, deems it appropriate to relegate the matter back to the trial Court to decide the said aspect and to pass fresh orders.

9. Accordingly, the I.A.No.74 of 2022 is set aside and the matter is remitted back to the trial Court to pass fresh orders in the light of Order XXXVII Rule 3(5) CPC. The trial Court is directed to dispose of the interlocutory application as expeditiously as possible.

10. Accordingly, the Civil Revision Petition is **allowed**. There shall be no order as to costs.

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

JUSTICE RAVI CHEEMALAPATI

Date: 13th February, 2026

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THE HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI

CIVIL REVISION PETITION NO: 1003/2024

Date: 13th February, 2026

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