

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.5566 of 2010

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ORDER:
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This Civil Revision Petition is filed challenging the order

dt.25-09-2010 in I.A.No.1627 of 2010 in O.S.No.183 of 2006 of the

I Additional Senior Civil Judge, Rajahmundry.

2. The petitioners herein are defendant Nos.2, 3, 4 and 5 in the suit. The 1st respondent/plaintiff filed the above suit for dissolution of a partnership firm, for rendition of accounts and for payment of his share therein and other reliefs.

3. The 1st respondent then filed an application I.A.No.1627 of 2010 under Order XII Rule 8 CPC requesting the Court to pass an order directing the petitioners and other partners herein to produce certain documents referred to in the said I.A., which are in their custody.

4. Counter affidavit was filed to the said application by 4th respondent herein contending that the said application

is not maintainable.

5. Another counter affidavit was filed by petitioners contending that 1st respondent himself was the Managing Partner and he is the custodian of all the documents and 1st respondent cannot abdicate his responsibility as a Managing Partner and ask the petitioners to produce the original documents. They also contended that it is for the 1st respondent to satisfy the Court as to how he lost custody of original documents. They also contended that under Order XII Rule 8 CPC notice has to be served on the opposite party to produce the documents in Form 12 in Appendix "C" contained in the Code of Civil Procedure and such a notice has not been given and therefore it should be rejected.

6. Other contentions on merits have also been raised by petitioners.

7. By order dt.25-09-2010, the Court below disposed of I.A.No.1627 of 2010 with an observation that the documents sought to be filed by 1st respondent along with the said I.A. can be received as secondary evidence subject to proof, relevancy and admissibility.

8. Challenging the same, this Revision is filed.

9. Learned counsel for petitioners contends that when the application is filed under Order XII Rule 8 CPC requesting the Court to direct the respondents to produce documents which are said to be in their custody, the Court below should confine itself to granting or rejecting the said relief. It cannot go beyond the scope of said application and give a direction that the documents sought to be filed by 1st respondent be received as secondary evidence. He therefore contended that the relief granted by the Court below is outside the scope of the said I.A.

10. Although the learned counsel for 1st respondent sought to sustain the said order, I agree with the counsel for petitioners that the order passed by the Court below is outside the scope of the application itself. It therefore ought to be set aside and the Court below should be directed to decide the application either way.

11. Therefore, the Civil Revision Petition is allowed, the order

dt.25-09-2010 in I.A.No.1627 of 2010 in O.S.No.183 of 2006 of the

I Additional Senior Civil Judge, Rajahmundry is set aside, and the said I.A. is remitted back to the Court below to decide afresh in accordance with law after hearing both sides. No costs.

12. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 18-06-2015

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