

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.2113 of 2013

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ORDER:

The petitioner herein is the plaintiff in O.S. No.2243/2003 on the file of the Court of the learned V Senior Civil Judge, City Civil Court, Hyderabad. The said suit was filed for eviction of respondent No.1 from the suit schedule property and for recovery of mesne profits. The suit was decreed on 23.08.2007 and the First Appeal in A.S. No.225/2008 was also ended in dismissal. Later on, the possession was delivered to the plaintiff. She filed I.A.No.161/2010 for enquiry into mesne profits, and during the process of enquiry, she filed an affidavit in lieu of chief examination. After receipt of the same, respondent No.1 herein filed I.A. No.1019/2012 to eschew the chief affidavit of plaintiff from the record on the ground that provisions of Order XVIII Rule 4 C.P.C. are not applicable to the proceedings after the disposal of the suit. The said application was contested by the petitioner herein stating that the proceedings include the execution proceedings also and there is no need for appointing an Advocate Commissioner for noting down the prevailing rent in the vicinity of the suit premises as the petitioner herself filed requisite documents for the purpose of ascertainment of mesne profits. However, the application filed by respondent No.1 in I.A.No.1019/2012 was allowed by eschewing the evidence of PW1, filed in the form of chief affidavit. Challenging the same, the present Civil Revision Petition was filed.

Consequent to passing of the decree in a suit for eviction, it is for the plaintiff to lead evidence with regard to mesne profits, and it is not necessarily confined to the process of ascertainment by an Advocate Commissioner. The Court itself can determine the mesne profits, if the plaintiff can adduce necessary evidence. The appointment of an Advocate Commissioner is the discretion of the Court in the facts and circumstances of the case. In the present case, the plaintiff wants to lead evidence with regard to the rents prevailing in the vicinity, and accordingly, filed an affidavit in lieu of the chief-examination. The filing of

affidavit cannot be restricted to the proceedings in a suit and it cannot be said that the same process cannot be adopted after disposal of the suit. If the plaintiff does not stand for cross-examination, it is altogether a different matter.

In the circumstances, the order passed by the lower Court in I.A. No.1019/2012 dated 28.01.2013 is set aside, and this Civil Revision Petition is allowed. In view of the nature of proceedings pending before the Court, this Court feels it just and proper to direct the lower Court to dispose of I.A.No.161/2010 on or before 30.04.2016. Since the parties are represented by the counsel, learned counsel for both sides are requested to co-operate for the disposal of the said I.A.No.161/2010.

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

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.RAMALINGESWARA RAO, J

21.12.2015

MVA