

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.2903 of 2013

ORDER:

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The plaintiffs in O.S. No.1266/2008 on the file of the Court of the learned II Senior Civil Judge, City Civil Court, Hyderabad, are the petitioners herein. They filed the suit for eviction and recovery of possession against the defendants. During the course of evidence of DW1, when the plaintiffs wanted to exhibit previous deposition of DW1, who deposed as PW1 in O.S.No.106/2006 on the file of the Court of the learned X Additional Chief Judge, City Civil Court, Hyderabad, an order was passed holding that the previous deposition of DW1 cannot be received in evidence for any purpose. Challenging the said order, the present Civil Revision Petition was filed.

This Court is not in a position to understand the stage of the proceedings, inasmuch as no application was filed by the plaintiffs herein for receiving the deposition of DW1, who deposed as PW1 in O.S.No.106/2006. Now the evidence of DW1 is going on. At this stage, PW1 wanted to confront DW1 with regard to the statements made by him in the earlier proceedings. In such circumstances, the lower Court should not have objected to the plaintiffs cross-examining DW1 with regard to the deposition made by him as PW1 in the earlier proceedings. If DW1 denies such statement made as PW1 in the earlier proceedings, then the plaintiffs are entitled to mark the said document. Though the marking of said deposition of DW1, who deposed as PW1 in O.S. No.106/2006, it is not under Section 33 of the Indian Evidence Act, such course of action by the plaintiffs is permissible during the course of cross-examination of DW1.

In view of the nature of the impugned order and the stage at which the present order is passed while upholding the view of trial Court with regard to non-application of Section 33 of the Indian Evidence Act to the facts of the case, the present Civil Revision Petition is dismissed and the trial Court is directed to allow both the parties to lead evidence in accordance with law. 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

26.11.2015

MVA