

THE HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

CIVIL REVISION PETITION Nos.3846 & 3855 OF 2015

-

COMMON ORDER:

Heard learned counsel for the petitioner and learned counsel for the respondents.

O.S.No.321 of 2003 is filed by the respondents for dissolution of the firm. In the said suit, the petitioner had sought to summon the Commissioner, Municipal Corporation, Chittoor District, by filing I.A.No.275 of 2015 so as to produce the records as mentioned in the petition. The said application was allowed by the Court below on 01.05.2015. However, since the said order was not complied with, the petitioner filed I.A.No.486 of 2015 to issue show cause notice to the Commissioner, Municipal Corporation, Chittoor District, and also for disobedience of the orders of the Court. The same was also ordered by the Court below and summons were issued to the Commissioner in May, 2015 fixing the date for his appearance as 09.06.2015. It appears that on that day, an officer authorised by the Commissioner, deposed as DW.2 but without any record claimed that no record is available. In view of that, the petitioner filed the present I.A.No.627 of 2015 for the same relief to summon the Commissioner to produce the records in the impugned order. However, the said application has been dismissed with connected I.A.No.628 of 2015 seeking to reopen the suit. These two revisions are directed against the said orders.

I, however, find it difficult to accept the reasoning of the Court below in the impugned orders. As is evident, what is recorded is that the Commissioner was already summoned to appear and produce the documents, namely, plan approved for reconstruction of a building and tax demand register. But, in response to the same, the Commissioner has not appeared before the Court. There is no reason for him not to appear before the Court and produce the documents. Unfortunately, the Court below has merely accepted the evidence of DW.2, who is no other than the

officer delegated by the Commissioner, as sufficient compliance. The Court below also unfortunately accepted his claim that the record is not available though the Municipality is the custodian of the records and must produce the same and cannot claim an excuse of this nature.

Both the Civil Revision Petitions are accordingly allowed and the Court below shall issue fresh summons to the Commissioner requiring him to appear and produce the documents, as already directed, by fixing appropriate date for hearing and on that day, the evidence of the Commissioner shall be recorded. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these Civil Revision Petitions shall stand closed.

VILAS V.AFZULPURKAR, J

30.10.2015

KH