

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

CIVIL REVISION PETITION No.5107 of 2010

ORDER:

This Revision is filed challenging the order dt.10-08-2010 in I.A.No.421 of 2010 in O.S.No.2 of 2005 of the I Additional District Judge, Warangal.

2. The petitioners herein are defendant Nos.1 and 2 in the above suit. The case was coming up for the evidence of 1st petitioner.
3. At that stage, an affidavit of the clerk of the Advocate of petitioners in the Court below was filed alleging that 1st petitioner was suffering from spondylitis and was unable to attend the Advocate's office and give instructions to his counsel and therefore he should be examined on commission.
4. This application was opposed by 1st respondent/plaintiff contending that 1st petitioner was attending to his business at Warangal daily and that he was also attending the ginning mill at Gorrekunta once in two or three days. It was contended that the medical certificate filed by petitioners was false and the wife of 1st petitioner did not speak about the alleged illness of 1st petitioner. Apart from this, it was also contended that 1st petitioner was a litigant involved in several cases and he is appearing before different Courts and there is no necessity to appoint a commission to examine him since there is no possibility of getting fair answers from him and he should be examined in the Court only so that his demeanor can be

observed. It was also contended that the Advocate's clerk had no *locus standi* to file the petition.

5. By order dt.10-08-2010, the Court below dismissed the said application. It considered the medical certificate previously filed by petitioners on 12-07-2010 and the other medical record filed on

09-06-2010 and observed that the medical record only indicates that

1st petitioner was suffering from spondylitis and bed rest which was suggested for one month, had also been completed. It therefore held that there is no ground for 1st petitioner to seek appointment of an Advocate Commissioner to record his evidence. It held that there is nothing to show that 1st petitioner still needs bed rest and he is unable to move. It accepted the contention of the learned counsel for

1st respondent that 1st petitioner was attending before other Courts while moving application for adjournment before the Court on health grounds. It pointed out that merely because 1st respondent was examined on commission because she was suffering from serious arthritis problem, it is not proper for the 1st petitioner to seek similar relief and that the demeanor of the 1st petitioner needs to be observed by the Court.

6. Challenging the same, this Revision is filed.
7. Heard Sri G.Kishore Kumar, learned counsel for petitioners and Sri T.S.Anand, learned counsel for 1st respondent.
8. Learned counsel for petitioners contended that the Court below

was not correct in dismissing the application for appointment of Commissioner to record the evidence of 1st petitioner. He pointed out that 1st petitioner was suffering from spondylitis, was unable to attend the office of the Advocate and to give instructions to prepare chief-examination affidavit of D.W.1 and that was why the affidavit on his behalf was filed by Advocate's clerk. He also contended that the health condition of 1st petitioner is not good, and since 1st respondent was any way examined on commission, the 1st petitioner may be shown the same indulgence.

9. Learned counsel for 1st respondent refuted the above contentions and supported the order passed by the Court below.
10. The application for appointment of a Commissioner to record the evidence of 1st petitioner on commission was filed on 14-07-2010. The medical certificate filed by petitioners is dt.18-10-2010 and it only indicates that 1st petitioner was advised rest for one month. There is nothing placed on record before the Court below or before this Court now that 1st petitioner is in any way disabled from attending the Court for giving evidence. Even otherwise spondylitis is not such a serious illness as to entitle the 1st petitioner to have his evidence recorded on commission. The suit in question is a very old suit and the petitioners have successfully dragged it on for about 10 years.
11. In this view of the matter, I do not find any error or infirmity in the order passed by the Court below refusing to permit the 1st petitioner to examine on commission.

12. The Civil Revision Petition is accordingly dismissed. No costs.

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 27-10-2015

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