

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.4146 OF 2015

ORDER:

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

2. The petitioner herein is defendant in O.S.No.63 of 2013 on the file of the Court of I Additional Judge, Nizamabad (for short, trial Court). The respondent herein filed the above suit for recovery of an amount of Rs.13,36,000/- against the petitioner. The evidence of the petitioner and the respondent was completed. The petitioner got marked Exs.B.1 and B.2, two bills issued by the shop owners on 08.12.2002 in order to show that on the said date, the petitioner was not in Nizamabad, but he was at Kanigiri. The petitioner filed I.A.No.1239 of 2015 seeking appointment of an Advocate Commissioner for examining and recording the evidence of the owners of the said shops, who issued purchase bills on 08.12.2012. The said application was dismissed by the trial Court by its order dated 14.09.2015. Challenging the same, the present Civil Revision Petition is filed.

3. The petitioner filed the said application on the ground that the owners of Lakshmi Megasri Fancy and General Stores, Post Office Road, Kanigiri and Rehmania Shop, Club Road, Kanigiri are busy with their business and due to ill-health also, they are not willing to come to the Court for deposition. Their examination is necessary in view of marking of Exs.B.1 and B.2, and for that purpose, sought appointment of Advocate Commissioner. The said application was opposed by the respondent stating that the particulars of the owners of the shops were not mentioned and the petitioner has been protracting the matter. Ultimately, the trial Court passed the following order.

“6. The respondent/plaintiff filed the suit on the foot of promissory note for recovery of suit amount of Rs.13,36,000/-. The respondent/defendant filed a written statement denying passing of

consideration. The case of the defendant is that on the date of Ex.A.1 promissory note, he was not in Nizamabad town and he was in Kanigiri, Prakasham district. He filed two bills issued by shop in Kanigiri to substantiate his contention. The defendant took number of adjournments for examining shop owner and ultimately he could not secure the witness and filed this petition. Perusal of Exs.B1 and B2 show that though the name of the shop is clearly noted, but the bills were signed and one cannot state precisely by whom they were signed. The petitioner/defendant did not take pains of securing the name of the person who signed on the bills. There is considerable force in the contention of the learned advocate for respondent/defendant that in the absence of furnishing the name and particulars of a person proposed to be examined by the Commissioner, the petition cannot be allowed. There is also force in his contention that the chief-examination affidavit of the person whose evidence/cross-examination is proposed to be recorded by the Commissioner is not filed. There is also force in his contention that in the absence of such chief-examination affidavit, it amounts to compelling an unknown person of a shop to appear before the Commissioner for the purpose of his examination. This court does not find any merits in the petition both on merits and also on technical grounds. Accordingly, the point is answered holding that there are no merits in the petition.”

4. The learned counsel for the petitioner is willing to file affidavits in lieu of chief examination of the shop owners whose evidence is proposed to be recorded in order to give sufficient opportunity to the petitioner. This Court feels that it is just and necessary to allow I.A.No.1239 of 2015 subject to condition of the petitioner filing the affidavits in lieu of chief examination of the proposed witnesses within a period of two weeks from the date of receipt of a copy of this order. An Advocate Commissioner shall be appointed by the trial Court, upon filing such affidavits of the proposed witnesses, on usual terms and the report of the Advocate Commissioner shall be asked to be filed within four weeks thereafter. The petitioner shall cooperate with the conclusion of the case by 31.12.2015. If the affidavits are not filed within the specified time, it is open to the trial Court to proceed further in the suit.

5. The Civil Revision Petition is, accordingly, allowed. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAMALINGESWARA RAO, J

Date: 04.11.2015

Note: Issue CC by 9.11.2015.

B/o. TJMR

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