

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

CIVIL REVISION PETITION NO.830 of 2015

ORDER:

This revision is preferred by the defendant in the suit, aggrieved by the orders passed by the learned I Additional Senior Civil Judge, Kakinada, in I.A.No.783 of 2014 in O.S.No.673 of 2013.

The respondent herein instituted the suit for recovery of money on the foot of a pro-note. The petitioner herein has taken a stand that the transaction relating to an agreement was arrived at the police station and the said transaction was settled by A.S.I. by name T.Subba Rao of Sarpavarm Police Station. Therefore, the petitioner herein has moved I.A.No.783 of 2014 to issue summons to Sri T.Subba Rao, A.S.I., Sarpavarm Police Station and Sri Poranki Subbaraju S/o. Satyanarayana Raju, age 70 years, R/o. Vanaja Apartments, 1st Floor, Near Yenugulabomma Centre, Pragathinagar, Hyderabad, to give evidence as court witnesses. That application was dismissed. This application was resisted by the respondent on the ground that the alleged settlement of transaction by the A.S.I. at Sarpavaram Police Station has not been pleaded in the written statement and thus, an improvement is made in the present case. The counter affidavit filed by the respondent is placed along with this paper book at page No.8. The respondent has not merely denied the averments but went on to assert as under in that counter affidavit:

“..... The said false allegations are only invented for the purpose of filing of this petition. In fact, this respondent is not admitting such of the allegations.”

It was also contended by the respondent that the alleged settlement said to have been worked out by Sri T.Subba Rao, is not a part of his official duty, therefore, he cannot be summoned as court witness. The respondent has categorically pointed out that if the petitioner intends to examine the said individuals, he may produce them before the Court as his witnesses. It is therefore very clear that the respondent has totally denied the allegations of the settlement that have taken place in the police station.

The learned counsel for the petitioner has placed reliance upon the judgment rendered by this Court in **Kosuru Kalinga Maharaju Vs. Kosuru Kaikamma and**

others. It is true that Rule 14 of Order 6 of CPC conferred power on the Court to examine any person including a party to the suit and not called as a witness by a party to the suit, if the Court thinks it necessary to do so by summoning such person as a court witness to give evidence or to produce any evidence in his possession on a day to be appointed by it. The first and fundamental requirement is that the necessity must be felt by the Court to examine a particular person for purpose of resolving the controversy. The Court, in the instant case, has categorically recorded a finding that there is no such necessity felt by it. Hence, no exception need be drawn to the order passed by the Court and liberty has already been preserved to the petitioner herein to examine the two individuals whom he has proposed to examine as court witnesses on his behalf. Therefore, I do not find any infirmity in the order passed by the learned I Additional Senior Civil Judge, Kakinada, in dismissing I.A., for me to exercise revisional jurisdiction.

Accordingly, this revision stands dismissed.

Consequently, miscellaneous petitions, pending in this petition, shall also stand dismissed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

20.04.2015

ska