

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NO. 5102 OF 2014

ORDER:

This Revision is filed challenging the order dated 7.10.2014 in I.A.No. 1845 of 2014 in O.S.No. 28 of 2013 of the II Additional Chief Judge, City Civil Court, Hyderabad.

2. The petitioner herein is the plaintiff in the suit. The suit was filed by the petitioner against the respondents for recovery of a sum of Rs. 54,49,833/- with interest @ 24% per annum on the suit amount from the date of filing of the suit till the date of realization.

3. Written statement was filed opposing the suit claim by the respondents.

4. Issues were framed. Trial commenced. The evidence on the side of the petitioner was concluded.

5. The second respondent herein filed an affidavit in lieu of chief-examination as DW-1. The matter was posted for her cross-examination. At that stage, she filed I.A.No. 1845 of 2014 under Order 26 Rule 1 CPC to record the evidence of DW-1 at her residence, pleading that she has to take care of her mother-in-law aged about 80 years and father-in-law aged about 85 years, who constantly require her attention preventing her from personally attending the Court for cross-examination.

6. This was opposed by the petitioner, who contended that in the affidavit in lieu of chief-examination, the second respondent had described herself as having occupation of 'business' while now, in the affidavit filed in support of I.A No. 1845 of 2014, she pleaded that she has to assist her in-laws in taking medicine and attending to their movements. It is further contended that the first respondent/first defendant is the Managing Director of M/s Navabharat Agro Products Limited and she is attending day to day affairs of the said firm for more than four years and the second respondent had in fact traveled abroad after the demise of her husband on 22.9.2012 and therefore her plea that she cannot attend the Court on account of her responsibility to manage the needs of her mother-in-law and father-in-law cannot be accepted.

7. By order dated 7.10.2014, the Court below allowed the said application holding that the second respondent-DW-1 can be examined at her residence through the Advocate Commissioner.

8. Challenging the same, this Revision is filed.

9. Counsel for the petitioner contended that in the light of the counter filed by the petitioner in I.A.No. 1845 of 2014, the Court below ought not to have allowed the said I.A; that there is some solemnity attached to giving her deposition in the Court; the second respondent does not fall within the category of a person whose presence for recording evidence can be dispensed with and a commission ought not to be issued for recording her evidence under Order 26 Rule 1 CPC; and therefore, the impugned order cannot be sustained.

10. Counsel for the respondents on the other hand stated that there is no error in the order passed by the Court below and it does not warrant any interference by this Court under Article

227 of the Constitution of India. However, he fairly stated that the father-in-law of the second respondent is no more.

11. Since it is admitted that father-in-law of the second respondent is now no more, her responsibility to attend on him no longer exists. The mother-in-law of the second respondent is the first defendant. It is not disputed that she is not attending the day to day affairs of M/s Navabharat Agro Products Limited, of which she is the Managing Director.

12. Order 26 Rule 1 CPC states:

*"1. **Cases in which Court may issue commission to examine witness:** Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it."*

13. Admittedly, the witness in the present case resides within the jurisdiction of the trial Court. It is not the case of the second respondent that she herself is sick or infirm and therefore unable to attend the Court. She is also not a person who is residing beyond the local limits of the Court's jurisdiction or who is in service of Government who cannot, in the opinion of the Court, attend without detriment to the public service and who is exempted from personal appearance under Order 26 Rule 4 (1) (a) and (c). In my opinion, examination in the Court premises is attached with a certain solemnity and unless the second respondent falls in the above categories or is otherwise exempted from attending the Court to give evidence in the Courts, it is not open for the Court to permit recording her evidence at her residence on a commission. Similar view has been taken by this Court in C.R.P.No. 3575 of 2013 decided on 30.10.2013.

14. In this view of the matter, the impugned order passed by the Court below cannot be sustained. It is accordingly set aside. The Court below is directed to conduct the cross-examination of DW-1 in the open Court on a date fixed by it for the said purpose.

15. Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs.

16. As a sequel thereto, miscellaneous petitions, pending if any, shall stand dismissed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 16.06.2015
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