

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition Nos.3782 and 3852 of 2015

Date: 04-12-2015

Between:

Housing Development Finance Corporation

Limited, represented by its Chairman,

Mumbai

.... Petitioner

AND

B.V. Radhakrishna and 5 others

.... Respondents

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition Nos.3782 and 3852 of 2015

COMMON ORDER:

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The first defendant in O.S.No.1426 of 2010 on the file of I Senior Civil Judge, City Civil Court, Hyderabad is the petitioner herein.

The 1st respondent herein filed the said suit challenging the order of transfer by way of letter dated 04-05-2010 issued by the 4th respondent transferring the plaintiff from Hyderabad Branch to Kolkatta office. The 6th defendant in the suit appears to have filed the written statement and he did not choose to come to the witness box. After completion of evidence on both sides,

I.A.No.1356 & 1357 of 2013 were filed by the plaintiff seeking to reopen the suit and also to issue summons to the 6th defendant to be examined as Court witness. The plaintiff filed the affidavit in support of the application stating that the presence of the 6th defendant is necessary as the defendants have been concealing material facts in the suit. A counter was filed by the 6th defendant stating that the present petition was filed after closure of the evidence of both parties and the matter was coming up for final hearing after undergoing more than a year for arguments. It is further alleged that the plaintiff-petitioner did not file a single document in support of his case and the application is not maintainable. The petitions filed by the petitioner-plaintiff were allowed by a common order dated 01-07-2015 by holding as follows:

“.....Here in the present case on hand, it is not in dispute that the 6th defendant/6th respondent signed the pleadings (written statement) and it is also obvious that the same respondent filed the present counter-affidavit. May be, it is the view of the plaintiff that the defendant No.6 does not have much knowledge about the transfer polices and other relates issues of the employees. Admittedly, the person who is examined as DW.1 is not a party to the proceedings. In other words, he is not shown as one of the defendants. Further, there is no written authorization given by the first respondent to DW.1 to give evidence on behalf of all the respondents/defendants. It is the view of the court that it would be just and proper that the respondent No.6/defendant NO.6 is to be summoned and permitted to be examined as court witness, as no prejudice or injustice will be caused to the respondents/defendants. As such, the court is of the opinion that allowing the present petitions does not cause any inconvenience and prejudice to the respondents. Thus, this court is of the view that there cannot be any impediment in allowing the petitions.

Accordingly, this point is held.....”

As held by this Court in the decision considered by the trial Court, the discretion vested in the trial Court should have been exercised with care and caution after recording the reasons for allowing such application. No doubt, the 6th defendant signed the written statement, but he did not choose to come to the witness box. It is not known for what reason the 6th defendant, who filed the written statement, was not examined on behalf of the defendants. However,

when summons are sought to be issued after closure of evidence by the plaintiff, the trial Court should have considered the application of the plaintiff by considering the entire evidence on record and should have seen whether there was any justification for such application at the belated stage or not. Those considerations were not taken into account, but the applications were allowed on the ground that no prejudice or injustice will be caused to the defendants.

In view of the same, the discretion vested in the Court was not properly exercised and hence, the impugned orders dated 01-07-2015 are set aside and the matter is remanded to the learned I Senior Civil Judge, City Civil Court, Hyderabad for passing an appropriate order in accordance with law after hearing the learned counsel for both sides on or before 31-01-2016.

The Civil Revision Petitions are allowed accordingly. No costs.

A.

RAMALINGESWARA RAO, J

Date: 04-12-2015

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