

THE HON'BLE SRI JUSTICE A.V. SETHA SAI

CIVIL REVISION PETITION No.5073 of 2014

ORDER:

Defendant in O.S.No.101 of 2008 on the file of the Court of Senior Civil Judge, Jagtial, Karimnagar District is the petitioner in the present revision filed under Article 227 of Constitution of India and this revision assails the order, dated 02-12-2014 passed by the said Court in I.A.No.629 of 2014.

Heard Sri Venkat Reddy Donthi Reddy, learned counsel for the petitioner and Sri A. Krupadhar Reddy, learned counsel for the plaintiff/respondent apart from perusing the material available before the Court.

The respondent herein instituted O.S.No.101 of 2008, against the petitioner herein on the file of the Court of the learned Senior Civil Judge, Jagtial, for recovery of a sum of Rs.7,00,000/- with future interest @ 18% per annum. The defendant/petitioner herein filed written statement resisting the plaint pleadings. In the said suit, the petitioner herein filed I.A.No.629 of 2014 under Order XVIII Rule 19 of the Code of Civil Procedure (for short, 'the CPC') for appointment of Commissioner-Advocate to record his evidence and the plaintiff/respondent herein filed a counter, opposing the said application.

The learned Senior Civil Judge, Jagtial by way of an order, dated 02-12-2014, dismissed the said application. Calling in question the validity of the said order, the instant revision has been filed.

It is contended by the learned counsel for the petitioner that the order passed by the learned Senior Civil Judge is erroneous, contrary to law and opposed to the very spirit and object of provisions of Order 18 Rule 19 of C.P.C. It is the further contention of learned counsel that the Court below did not properly consider averments in the supporting affidavit of the present I.A. and had the contents of the affidavit been considered from proper perspective, the order impugned would not have emanated. It is further submitted that the

Court below ought to have considered the ill-ness of the petitioner, which would be evident from the medical certificate, dated 04-12-2014 issued by Sri Laxmi Hospital, Karimnagar. Learned counsel further submits that the reason assigned by the Court below for dismissing the application is wholly untenable.

Reiterating the contents of the counter filed by the respondent in the Court below it is contended by the learned counsel for the respondent that the order impugned is inconformity with the provisions of Order 18 Rule 19 of the C.P.C. and there is no illegality nor any material infirmity in the order under challenge and in the absence of the same, the petitioner is not entitled for any relief from this Court and the revision is liable to be dismissed. It is also the submission of the learned counsel for the respondent that the reasons assigned by the Court below are cogent and convincing. It is the further submission of the learned counsel that the petitioner herein did not produce any medical certificate in support of his plea before the Court below.

Power to permit cross-examination by Commissioner is required to be exercised with great care, caution and circumspection and having regard to the facts and circumstances of the case. In the cases where there is serious allegation of fabrication of evidence and falsity it would be proper for the Court to record the cross-examination by itself because it can observe closely demeanor of the witness also. These aspects are also to be kept in mind while dealing with these applications.

In the instant case petitioner herein, as evident from the material on record, did not file any medical certificate in support of the pleadings. In fact, certificate, dated 04-12-2014 issued by Sri Laxmi Hospital is produced before this Court. The learned Senior Civil Judge also recorded a finding that since the affidavit filed in support of the present I.A. was verified at Jagtial the version of the petitioner cannot be believed.

While pointing out the same the learned counsel for the petitioner has brought to the notice of this Court that the first paragraph of the affidavit filed in support of the application clearly shows that the affidavit was deposed at Karimnagar.

In the instant case it is the stand of the petitioner herein that as per the medical certificate, dated 04-12-2014 issued by Sri Laxmi Hospital, Karimnagar the petitioner was kept on complete bed rest with lumbar traction and he is advised to avoid heavy work and complete bed rest for a period of 1 year. In support of his alleged ill-ness the Discharge Summary is also placed on record before this Court.

In view of this material this Court deems it appropriate to permit the petitioner herein to file an application afresh before the Court below to the same relief in the interest of justice and taking into consideration the totality of circumstances.

For the aforesaid reasons, the Civil Revision Petition is disposed of permitting the petitioner herein to file another application before the Court below for appointment of Advocate Commissioner with further direction to the Court below to dispose of the said I.A., in accordance with law, un-influenced by the orders impugned or any of the observations made in the present order.

It is also made clear that if any such application, is filed by the petitioner herein within a period of one month from today appropriate orders shall be passed on the said application within a period of one month thereafter. It is further made clear that, if any, such application is not filed within the time stipulated the order impugned in the present revision shall hold good.

The Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.V. SETHA SAI, J

April 27, 2015

Note: Furnish C.C. in

two days. B/o.PN

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