

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.3911 of 2014

ORDER:

Petitioner is the tenant and respondent is the landlord. The respondent filed R.C.C.No.22 of 2010 on the file of the Court of Rent Controller-cum-Principal Junior Civil Judge, Kurnool (for short, trial Court) seeking eviction of the petitioner. At the instance of the respondent in I.A.No.80 of 2012, an Advocate Commissioner was appointed to note down physical features of the petition scheduled property with the assistance of a Municipal Engineer or a Municipal Architect. The Advocate Commissioner completed his commission and submitted a report by taking the assistance of a Consultant and Municipal Licensed Engineer. After filing of the report, the petitioner filed the present application i.e., I.A.No.60 of 2014 for summoning the Advocate Commissioner as well as the Consultant and Municipal Licensed Engineer for cross-examination. When the trial Court dismissed the said application by its order dated 23.09.2014, the petitioner filed the present Civil Revision Petition.

2. The learned counsel for the petitioner submits that the petitioner filed objections to the report submitted by the Advocate Commissioner, whereas the learned counsel for the respondent submits that the present application was filed after a delay of one year in order to drag on the proceedings.

3. The trial Court dismissed the application with the following observations:

“8. As seen from the report of Advocate Commissioner, he issued notice to both parties and to the Municipal Licensed Architect Engineer and also sent a registered notice to the Municipal Engineer on 6-1-2013 but the said Municipal Engineer did not present and hence, he took the assistance of Municipal Licensed Architect Engineer and that during his inspection, both parties and their advocates were present. Hence, simply stating that the report of Advocate Commissioner is not according to the directions of the Court is not maintainable as the Advocate Commissioner gave answers to the work memos filed by both the parties. Moreover, as seen from the report of Municipal Licensed Engineer P.V. Chalamaiah, it discloses that the letterhead

and seal of the said engineer has been recognized by the Municipal Corporation, Kurnool as Grade I with ROC.No.9063/94-02 and hence, the allegation of the petitioner terming the said engineer as a person without knowledge is hereby refused. Even the work memo filed on behalf of the petitioner does not disclose that he had disputed about the report of licensed engineer. Moreover, R.C.C. is of the year 2010 and is listed one and is coming for further evidence of petitioner. At this stage, the petitioner filed his petition for summoning the said Advocate Commissioner and the said licensed engineer for cross-examining them on his behalf. It seems to be that the petitioner wants to gather evidence through the said persons. The report of Advocate Commissioner was received by this Court on 10-6-2013. More than one year has elapsed, now the petitioner came up with this petition which is not tenable one. Hence, there are no tenable grounds raised by the petitioner for allowing this petition. Hence, in view of the above said reasons and discussions, I have no hesitation to hold that there are no tenable grounds to allow this petition and hence, this petition is liable to be dismissed.”

4. The trial Court should not have come to the conclusion that the report submitted by the Advocate Commissioner is valid and proper without examining the objections filed by the petitioner. Order XXVI Rule 10 of the Civil Procedure Code enables the examination of the Commissioner by any party to the suit and hence, the trial Court should have allowed the application.

5. In the circumstances, the impugned order of the trial Court in I.A.No.60 of 2014 in RCC.No.22 of 2010 dated 23.09.2014 is set aside. The trial Court shall summon the Advocate Commissioner and the Consultant and Municipal Licensed Engineer in order to enable the petitioner to examine them in the interest of justice. In view of the pendency of R.C.C.No.22 of 2010 for the last five years, the trial Court is directed to dispose of the same, as expeditiously as possible, but not later than six months from the date of receipt of a copy of this order.

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

A.RAMALINGESWARA RAO, J

Date: 16.11.2015

TJMR