

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.1157 of 2015

ORDER:

Heard Sri N.Sriram Murthy, learned counsel for the petitioner and Sri N.M.Krishnaiah, learned counsel for the respondent.

2. This Revision Petition is filed challenging the order dt.17-11-2014 in I.A.No.246 of 2013 in I.P.No.41 of 2010 of the Additional Senior Civil Judge, Tenali.
3. Petitioner herein is the petitioner in I.P.No.41 of 2010. The petitioner got himself examined as P.W.1. He filed I.A.No.246 of 2013 to recall P.W.1 by enabling him to file additional chief examination affidavit on the aspect of typographical mistake occurred in the I.P. with regard to the execution of original Ex.P-1 promissory note by the Managing Partner of 1st respondent.
4. On 31-10-2014, the said application was allowed on payment of costs of Rs.300/- to the respondent and directing the petitioner/P.W.1 to undergo cross examination on or before 11-11-2014.
5. On 11-11-2014, costs were paid by the petitioner and he was also present to undergo cross examination. However, he was not cross examined by the other side and the matter was adjourned to 17-11-2014. On 17-11-2014, the petitioner was absent. Therefore, the Court below dismissed I.A.No.246 of 2013 on the ground that there was no compliance with the order dt.31-10-2014.
6. Challenging the same, this Revision Petition is filed.

7. Learned counsel for the respondent does not dispute the docket order dt.11-11-2014 filed by the petitioner indicating that costs were paid and that P.W.1 was also present for undergoing cross examination on 11-11-2014. Therefore, the Court below was not correct in stating that the conditional order dt.31-10-2014 was not complied with by the petitioner.
8. In fact it was the respondent who did not cross examine P.W.1 on 11-11-2014 and the petitioner cannot be penalized for the same. Therefore, even if the petitioner was absent on 17-11-2014, the Court below cannot dismiss I.A.No.246 of 2013.
9. Therefore, the Civil Revision Petition is allowed and the order dt.17-11-2014 in I.A.No.246 of 2013 in I.P.No.41 of 2010 of the Additional Senior Civil Judge, Tenali is set aside and the said I.A. is allowed and P.W.1 is directed to be present on 27-10-2015 for undergoing cross examination by the respondent without fail. In default of compliance with this order, the Revision Petition shall stand dismissed. No costs.
10. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 22-09-2015

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