

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

CIVIL REVISION PETITION NO.2292 OF 2015

Between:

Matta Srirama Murthy

.. Petitioner

and

Arepalli Srirama Murthy

.. Respondent

DATE OF JUDGMENT PRONOUNCEMENT

: 21st JULY, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

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| 1. | Whether Reporters of Local newspapers may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. | Whether Their Lordship wish to see the fair copy of the judgment? | Yes/No |

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.2292 OF 2015

ORDER

The plaintiff in O.S.No.85 of 2007 on the file of the learned IV Additional District Judge, Tanuku, is before this Court aggrieved by the order dated 01.05.2015 passed by the Court below in I.A.No.13 of 2014 filed therein by the respondent-defendant. The said IA was filed under Order 18 Rule 4(3) CPC to appoint an Advocate Commissioner to record the evidence of the Assistant Manager-HR, ESI Software (India) Private Limited, Bangalore. By the order under revision, the Court below allowed the IA and appointed an Advocate Commissioner as prayed for.

The suit, O.S.No.85 of 2007, was filed seeking specific performance of an agreement of sale dated 10.05.2006 alleged to have been executed by the respondent-defendant. The plea of the respondent-defendant in his written statement was that he did not execute the said agreement of sale and that he was at Bangalore on the day this agreement was alleged to have been executed. He therefore wanted to examine the Assistant Manager of his employer organization at Bangalore and filed the subject application.

No doubt, the application filed by the respondent-defendant was under the wrong provision of law as Order 18 Rule 4(3) CPC was not relevant and the application ought to have been filed under Order 26 Rule 4 CPC. However, it is trite that mere mention of a wrong provision is of no consequence when the Court is vested with the required power under another provision of the statute. The Court below took note of this settled position of law and dealt with the IA accordingly.

Sri T.V.S. Prabhakar Rao, learned counsel for the petitioner-plaintiff, fairly conceded that the respondent-defendant had all along taken the same plea and that it was also reflected in his written statement. That being so, the Court below rightly allowed the application as the evidence sought to be introduced had vital importance in the suit.

The apprehension of the petitioner-plaintiff that he would be saddled with the costs of the commission was also set at naught as the Court below directed the respondent-defendant to bear the entire expenditure, including that of the petitioner-plaintiff and his counsel.

On the above analysis, this Court finds no reason to interfere with the cogent order passed by the Court below. The CRP is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

21st JULY, 2015
PGS