

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.Nos.661 and 738 of 2015

COMMON ORDER :

Since both the Revisions arise between the same parties out of the same suit, they are being disposed of by this common order.

2. The petitioner in both the Revisions is defendant in the suit.

3. After the pleadings were completed an Advocate-Commissioner was appointed to record evidence of parties.

4. Before the Advocate-Commissioner, the respondent filed chief-examination affidavit of PW.1 and also marked Exs.A.1 to A.114.

5. On 04.09.2014, the XIII Additional Chief Judge (Fast Track Court) , City Civil Court, Hyderabad directed the Advocate-Commissioner to issue notice and fix the date of commission and execute the warrant by recording the evidence of witnesses. The Court had also observed that if the parties were not cross-examined on that day, their evidence would be treated as nil and adjourned the matter to 26.09.2014 for his report. Thereafter, the

Advocate-Commissioner fixed the date for cross-examination of PW.1 on 15.09.2014 at 12:00 noon.

6. On behalf of petitioner/defendant, a request was made to fix some other time, since the petitioner was unwell. On the ground that the cross-examination of PW.1 was not done on that day, the respondent/plaintiff's evidence was closed and the matter was posted for recording the evidence of petitioner.

7. In view of this development, the petitioner filed I.A.No.1055 of 2014 under Order 18 Rule 17 C.P.C. to recall PW.1 for cross-examination, and I.A.No.1056 of 2014 to re-open the plaintiff's side evidence, setting out these facts.

8. By separate orders dt.24.01.2015, the Court below dismissed both applications, observing that petitioner had not co-operated with the Advocate-Commissioner, and did not record the cross-examination of PW.1 on 15.09.2014.

9. Challenging the same, the present Revisions are filed.

10. Heard Sri S.A. Razak, counsel for petitioner, and Sri P. Giri Krishna, counsel for respondent.

11. It is no doubt true that on 15.09.2014, the date fixed for cross-examination of PW.1, on account of illness

of petitioner/defendant, time was sought by his counsel. In view of the order dt.04.09.2014 passed by the Court below, the Advocate-Commissioner did not show any indulgence and closed the evidence on the side of respondent/plaintiff.

12. If the petitioner was unwell and time was sought for that reason before the Advocate-Commissioner, the Advocate-Commissioner should have posted the matter to another date since no effective cross-examination of the opposite party can be done without the presence of one's own client. It cannot be said that there is any non-cooperation by petitioner with Advocate-Commissioner.

13. Therefore, the impugned orders are set aside, and the Civil Revision Petitions are allowed. No order as to costs.

14. PW.1 is directed to be present for cross-examination before the Advocate-Commissioner on 27.11.2015, and on that day petitioner shall positively cross-examine PW.1 through his counsel. In default, these Revisions shall stand dismissed.

15. As a sequel, miscellaneous petitions pending, if any, in these Revisions shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30.10.2015

Ndr/*

Note : Issue C.C. within one (01) week.

B/o.

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