

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

CIVIL REVISION PETITION No.4499 of 2014

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.03-07-2014 in I.A.No.48 of 2012 in O.S.No.22 of 2008 of the V Additional District Judge, Rayachoty.

2. The petitioners herein are defendants in the suit. The suit was filed for specific performance of an agreement of sale allegedly executed by defendants in favour of respondent/plaintiff.

3. Written statement was filed by defendants opposing the grant of relief to plaintiff. Issues were framed and plaintiff's evidence was concluded and defendant commenced leading his evidence. D.Ws.1 and 2 were examined by defendant.

4. However, D.W.3, having filed affidavit in lieu of chief-examination, did not turn up for cross-examination. Therefore, the evidence of D.W.3 was eschewed. For further evidence of defendant Nos.1 and 2, the matter was posted to 23-12-2011. On that day, such further evidence was not adduced by defendant Nos.1 and 2, there was no representation on their behalf and so their evidence was closed, and the matter was posted to 05-01-2012 for

evidence of

3rd defendant. On that day, the evidence of 3rd defendant was also closed on the ground that he was already set *exparte*, and case was posted to 20-01-2012 for arguments.

5. On 05-01-2012 itself, the petitioners filed an application under Section 151 CPC in I.A.No.48 of 2012 to reopen the suit to enable them to adduce further evidence on their behalf contending that on 23-12-2011 the 1st petitioner had suffered dysentery, that his counsel had gone to Madras High Court to advance arguments, and so, defendants could not produce D.W.4.

6. This application was opposed by respondent/plaintiff stating that ample time was taken by defendants to lead evidence, but he was not produced within the time granted and there are no *bonafides* in the said request made by petitioners. It was also contended that only to protract the proceedings, defendants have filed this application.

7. By order dt.03-07-2014, the Court below rejected the said application holding that petitioners had not chosen to adduce further evidence in spite of reasonable opportunity having been given to them by the Court, for the reasons best known to them; that they had not produced any documentary evidence to prove that their counsel went to Chennai High

Court to advance arguments or to show that 1st petitioner had suffered with dysentery.

8. Questioning the same, this Civil Revision Petition is filed.

9. Heard the learned counsel for petitioners and learned counsel for respondent.

10. Admittedly, the absence of the defendants and their counsel was on 23.12.2011 and their evidence was closed. The application to reopen the evidence was filed on 05-01-2012, the following date of hearing only. The cause for their absence according to Defendants 1 and 2 is that the 1st defendant was suffering from dysentery and their counsel had gone to Chennai High Court. To expect a party to produce documentary evidence that party was suffering from dysentery or that counsel is not available, in my opinion, is not proper particularly when the request to reopen the evidence was made in the next date of hearing itself. It cannot be said that there has been any inordinate delay on the part of petitioners in filing this application to reopen their evidence. Substantial rights of parties are involved. It is not disputed that the chief-examination affidavit of D.W.4 was filed on 05-01-2012 itself by petitioners.

11. When the explanation offered for the absence of a party has been given satisfactorily like in the present case, the Courts should be liberal in aiding to lead

evidence on their behalf not instead of shutting them out in the manner like the Court below as done in this case. Therefore, I am of the opinion that the Court below had erred in not allowing I.A.No.48 of 2012 in O.S.No.22 of 2008.

12. Accordingly, the Civil Revision Petition is allowed, and the order dt.03-07-2014 in I.A.No.48 of 2012 in O.S.No.22 of 2008 on the file of the V Additional District Judge, Rayachoty is set aside; I.A.No.48 of 2012 is allowed; and the Court below is directed to receive the affidavit in lieu of chief-examination of D.W.4; the petitioners are directed to produce D.W.4 for cross-examination on 23-03-2015 positively and on that day, the respondent shall cross-examine D.W.4. In default of petitioners producing D.W.4 on the said date, the Civil Revision Petition shall stand dismissed. No costs.

13. As a sequel, all miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 06-03-2015

Note : Issue C.C. by 10-03-2015

B/o.

vsv