

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.3771 of 2013

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.11.07.2013 in I.A.No.258 of 2012 in O.S.No.750 of 2010 on the file of the Additional Judge – cum – VI Senior Civil Judge, City Small Causes Court, at Hyderabad.

- 2.** The petitioners herein are plaintiffs in the suit.
- 3.** They filed the suit for rendition of accounts against respondents, and for perpetual injunction against them in respect of the plaint schedule property.
- 4.** The 1st petitioner was aged above eighty years in 2010 and he filed his chief-examination affidavit, and the matter was coming up for cross-examination of PW.1.
- 5.** At that stage, according to petitioners, he appeared four or five times for the purpose of his cross-examination by respondents, but they did not complete his cross-examination.
- 6.** He therefore filed I.A.No.258 of 2012 for appointment of an Advocate-Commissioner for recording his further cross-examination at his residence in Medak alleging that he is aged eighty-seven years old, suffering

from severe diabetes, requiring insulin injections twice a day and pointing out that he is residing in his native village in Medak District, which is 100 Kms. away from Hyderabad, and had to travel to Hyderabad every time for the purpose of his cross-examination affecting his blood sugar levels, which were increasing on account of long journeys undertaken in buses and in traffic; since it would endanger his life, he would not be able to attend the Court at Hyderabad to face cross-examination; and therefore, it ought to be conducted at his residence at Medak through appointment of an Advocate-Commissioner.

7. This application was opposed by 1st respondent who denied these allegations. He contended that the cross-examination should be done in the Court and that the alleged health problem of petitioner would not prevent him from deposing before the Court; PW.1 is the most important witness in the case and if his cross-examination is conducted before the Court, his demeanor can be noted. It was also stated that the counsel for 1st respondent also suffers from diabetes and 1st respondent cannot be held responsible for non-completion of the cross-examination of PW.1.

8. A memo was filed by respondent nos.2 to 4 adopting this counter of 1st respondent.

9. By order dt.11.07.2013, the Court below

dismissed this application. It held that the medical reports of PW.1 filed by petitioners indicate that “fasting blood sugar” is at normal level and only on one occasion it was high. It also referred to the Doctor’s certificate dt.11.06.2013 filed on behalf of petitioners and stated that the said certificate only indicated that 1st petitioner was under treatment for “diabetes” and was unable to walk from 06.06.2013, but it did not mention there that he was unable to move from the bed or was advised not to travel to any place. It also observed that complicated issues are involved, and therefore, the evidence of PW.1 has to be recorded in the Court.

10. Challenging the same, the present Revision is filed.

11. Heard Sri M.M. Ali, counsel for petitioners; and Sri R. Vinod Reddy, counsel for 1st respondent.

12. The facts narrated above indicate that 1st petitioner who was examined as PW.1 is more than eighty years. In the plaint, his age is indicated as eighty years and he should at least be eighty-five years as of date. The medical certificates dt.15.09.2012, 20.01.2013, 14.02.2013 and 08.06.2013, relating to 1st petitioner, clearly indicate that his blood sugar levels are very high. He is said to be taking treatment at Medak Nursing Home, Medak. The medical certificate dt.11.06.2013 issued by

the Medak Nursing Home not only indicates that he is suffering from diabetes but he also has a fracture of the *metatarsal* bone in the right leg, and it clearly states that he is unable to walk.

13. Unfortunately, the Court below has not appreciated these reports in the proper perspective and on the ground that the 1st petitioner is not shown to be unable to move from bed or that he was advised not to travel, it rejected the application to appoint Advocate-Commissioner to record cross-examination of PW.1 at his residence at Medak. Merely because complicated issues are involved in the suit, the Court below cannot ignore the serious health condition as well as the advanced age of witness and insist that he be examined in the Court.

14. In this view of the matter, I am of the opinion that the impugned order is vitiated by error in the exercise of jurisdiction vested in the Court under Article 227 of the Constitution of India. Therefore, the Civil Revision Petition is allowed and the impugned order dt.11.07.2013 in I.A.No.258 of 2012 in O.S.No.750 of 2010 on the file of the Additional Judge – cum – VI Senior Civil Judge, City Small Causes Court, at Hyderabad, is set aside. No order as to costs.

15. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 27.10.2015

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