

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.3432 of 2015

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ORDER:

The petitioner is the husband in F.C.O.P. No.1446/2012 on the file of the Court of the learned V Additional District & Sessions Judge-cum-Family Court, Visakhapatnam. He filed the said O.P. for annulment of marriage with the respondent, and in the said proceedings, he filed I.A. No.1188/2014 for appointment of an Advocate Commissioner preferably an advocate practicing at Bangalore or any other advocate who is willing to record the evidence in support of the medical prescriptions and certificates of the Doctors referred in the application, which are marked on the side of the petitioner as exhibits P4 to P10.

A counter was filed by the respondent stating that the Doctors mentioned in the application are all private practitioners, but not Government officials, and they do not come under the provisions of either Rule 1 or Rule 4(c) of Order 26 CPC, and accordingly, prayed for dismissal of the application, filed by the petitioner.

The lower Court dismissed the said application on 13.03.2015 with the following observations:

“As per the provision under Order 26 Rule 1 CPC, not permitted to appoint commissioner for recording the evidence of above mentioned doctors. In fact it is the duty of the petitioner-husband that he has to made them convenience to come to Visakhapatnam to give evidence to support of his case. More over it is very difficult to the both parties and the commissioner to go and record the evidence at Bangalore. Because the commissioner has to record the nearly 4 members of doctors it is impossible to make their convince in short period, on the other hand it is very difficult to staying there, it may not be possible to record the medical terminology and not control the witness and also highly expenceble. Hence by the commissioner. It is better to record the evidence is open court, for fair justice to both parties.

This court has not come beyond with jurisdiction against Order 26 Rule 1 CPC because the above mentioned Doctors are beyond this jurisdiction of this Court. Hence, petition is dismissed.”

Order 26 CPC gives ample power to the Court to appoint an Advocate Commissioner or send a request to the concerned Court, where the persons are residing, for recording the evidence. Admittedly the witnesses, who are going to be examined, are Doctors, whose presence could not be secured by the petitioner.

In the above circumstances, the dismissal of application, filed by the petitioner, by the lower Court is erroneous, and accordingly, the order dated 13.03.2015 is set aside and the matter is remanded to the learned V Additional District & Sessions Judge-cum-Family Court, Visakhapatnam, for disposal of the same in accordance with law, on or before 31.01.2016, after hearing the learned counsel for both parties.

Accordingly, this Civil Revision Petition is allowed. No order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.RAMALINGESWARA RAO, J

07.12.2015

MVA

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