

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

C.R.P.No.2996 of 2013

ORDER:

Heard Sri G.Ram Gopal, learned counsel for the petitioners. None appears for the respondent even though notice has been served on the respondents.

2. This Revision Petition is filed challenging the order dt.04-03-2013 in I.A.No.2162 of 2012 in O.S.No.3 of 2004 of the Senior Civil Judge, Machilipatnam.
3. The petitioners herein are defendants in the above suit. The said suit was filed against the petitioners by the respondent for recovery of money on the basis of a mortgage deed. Written Statement was filed by the petitioners opposing the suit claim and taking a plea that certain payments had been made to the respondent through her son Lankisetty Balaji who also happened to be the advocate appearing for the respondent. Trial commenced and the evidence on the side of the respondent was closed. The first petitioner was examined as D.W.1.
4. Thereafter, the petitioners filed I.A.No.2162 of 2012 to summon the son of the respondent by name Lankisetty Balaji, who also happened to be the respondent's advocate, since he knew all the particulars relating to the debt, the execution of mortgage and the payments made. It was specifically alleged that the son of the respondent had issued two chits in his own handwriting and typed in verification of the payments made by them and they have already been filed into Court and they need to be confronted to the son of the respondent at the time of his cross examination.

5. By order dt.04-03-2013, the Court below dismissed the said application stating that the son of the respondent, as advocate for the respondent, is entitled to privilege under Sections 126, 128 and 129 of the Indian Evidence Act, 1872 (for short 'the Act'). It also observed that the learned counsel for the respondent is a senior member of the Bar and his handwriting is available in hundreds of records and it is open to the petitioners to take steps for production of such records or to prove his handwriting and signature by other means.
6. Challenging the same, this Revision Petition is filed.
7. In the present case, there is a peculiar situation where the counsel for the respondent also happened to be the son of the respondent and it is alleged by the petitioners that he also actively participated in the transaction between the petitioners and the respondent. It is specific case of the petitioners that the son of the respondent had himself issued two chits in his own handwriting and typed in the verification for the payments made by them.
8. A reading of Sections 126, 128 and 129 of the Act indicates that the privilege conferred is a privilege of the client and not that of the attorney and the privilege is only confined to the communications between the client and the attorney, but it does not extend to acts done by the attorney, in his capacity as a family member of the client. It is also not a situation where the son of the respondent is alleged to have observed certain facts in the course of his employment. It is a situation where knowledge was not acquired by the son of the respondent solely by his being employed professionally, but was in some measure

obtained by his acting as a party to the transaction. In the real sense, the acts alleged against the son of the respondent have no reference to his professional employment as son of the respondent.

9. Therefore the Court below was not correct in holding that the petitioners cannot summon the son of the respondent, who is also the counsel for the respondent, since he enjoys the privilege under Sections 126, 128 and 129 of the Act.
10. Therefore, the Civil Revision Petition is allowed and the impugned order is set aside and I.A.No.2162 of 2012 is allowed. No costs.
11. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 22-09-2015

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