

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 277 of 2015

DATED 4th November, 2015

BETWEEN

Syed Ameeruddin

...Petitioner

And

Smt. K.Rajarajeswari

...Respondent.

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

CIVIL REVISION PETITION No.277 OF 2015

ORDER:

The petitioner herein is the defendant in O.S.No.1033 of 2010. The said suit was filed by the respondent herein seeking eviction and delivery of the plaint schedule property. In the said suit, evidence of plaintiff was closed and the suit is coming up for the evidence of defendant. The defendant filed his affidavit in lieu of chief examination on 22.4.2013. After filing the chief affidavit, he filed I.A.No.516 of 2013 seeking to summon one R.K. Kesari Singh, husband of the respondent/plaintiff, for cross-examination. The said application was dismissed by the Court below through order dated 24.11.2014, challenging

which the present Civil Revision Petition is filed.

The application to summon the husband of the respondent/plaintiff for cross-examination was filed on the grounds that the petitioner/defendant paid an amount of Rs.1,50,000/- towards advance on 12.08.1996 for renewal of the lease in respect of the schedule property and entered into another agreement of lease on the same day. The said lease agreement was renewed from time to time. The respondent herein filed O.S.No.7 of 2007 before the Court of the learned I Additional District Judge, Kurnool without making the petitioner as party to the said suit and obtained an Award in the Lok Adalat in LAC.No.30 of 2007. The said Award was obtained by the respondent/plaintiff to defraud his creditor. In order to prove the above facts, the husband of the respondent/plaintiff is necessary.

The respondent/plaintiff opposed the said application by filing counter affidavit. It was stated therein that there are strained relations between her (respondent/plaintiff) and her husband and the petitioner/defendant is trying to take advantage of the same. She further stated in the counter that if the petitioner wants to examine the said witness, he can produce him on his own instead of summoning him for cross-examination.

In the light of the above pleadings, the Court below passed the order under revision observing as follows:

“ Admittedly the respondent/plaintiff filed the suit against the petitioner/defendant for delivery of vacant possession of plaint schedule shop to her. On behalf of the petitioner/defendant, DW.1 and DW.2 were examined and the matter is coming for further evidence of petitioner/defendant. The petitioner/defendant filed the present petition praying the Court to summon the husband of respondent/defendant as witness for cross-examining him stating that he lost the lease deed in the floods affected on 2.10.2009 and that the respondent/plaintiff is trying to evade payment of advance amount of Rs.1,50,000/- to him. The respondent/defendant filed the present petition on 12.6.2013 itself. Instead of facing cross-examination, the petitioner immediately filed this petition just after filing of his chief-examination affidavit on 22.4.2013. If

the petitioner wants to examine the petitioner schedule person as a witness he can examine or produce him on his own instead of summoning him. But the petitioner failed to state the reason for examining the schedule person as a witness even before his cross-examination. The petitioner/defendant shall prove his own case basing upon his oral and documentary evidence. It seems to be that the petitioner wants to drag on the suit without producing any documentary evidence. Moreover, the evidence affidavit of petitioner/defendant was filed on 22.4.2013 itself and more than, one year has elapsed, the petitioner is dragging on the case for the best reasons known to him. In view of the above said reasons and discussion, I have no hesitation to hold that there are no merits in this petition for summoning the petition schedule person as a witness for cross-examination and hence this petition is liable to be dismissed.”

Though the reasons given by the Court below as excerpted herein above are not satisfactory, this Court feels that the reasons mentioned by the petitioner/defendant in the affidavit filed in support of the impugned application for summoning the husband of the respondent/plaintiff for cross-examination do not justify the relief sought for. Payment of alleged advance amount is nothing to do with the eviction sought by the respondent herein. If the petitioner has any grievance with regard to payment of amount to the husband of the respondent/plaintiff, it is altogether a different cause of action. In view of the same, dismissal of the interlocutory application filed by the petitioner/defendant through the order impugned in the present revision petition is proper and need not be interfered with.

In the result, the Civil Revision Petition is dismissed. Miscellaneous petitions pending consideration if any in the Civil Revision Petition shall stand closed in consequence. No order as to costs.

JUSTICE A. RAMALINGESWARA RAO

DATED 4th November, 2015.

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