

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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Civil Revision Petition No.1027 of 2015

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ORDER:

This revision, under Article 227 of the Constitution of India, is preferred against the Order of the 1st Additional Junior Civil Judge, Tirupati in I.A.No.66 of 2014 in O.S.No.169 of 2007 dated 27.02.2015.

The I.A. was filed, under Order 26 Rule 1 CPC, to appoint an Advocate/Court-Commissioner to examine DW.1. The petitioner before the Court below contended that he was seriously ill and, when the matter was listed on 02.02.2015, he could not attend as he could not move from his bed; consequently the Court below had eschewed the evidence of DWs.1 to 3; the Suit stood posted thereafter to 06.02.2015; on his request, the junior counsel came to his house for the purpose of obtaining his signature and attestation by him; and, hence, the petition was filed to appoint a Court Commissioner to record his cross-examination at his house. This application was opposed by the respondent-plaintiff.

The Court below held that the petitioner's contention that he could not move from the bed was not supported by any doctor's certificate; the petitioner had not explained what kind of ill-ness he suffered from; without any medical certificate in support of his plea of illness, there was no justification in acceding to the request that a Court Commissioner be appointed for recording his cross-examination; the petitioner had filed a Transfer O.P. before the District Court and, after one and half years, had not pressed the Transfer O.P; his application, for appointment of a Court Commissioner, was only to delay the proceedings; no document was filed to show that he was unable to attend the Court; no medical certificate was produced to substantiate his contention that he was suffering from a serious illness which disabled him from moving from his bed; and the application was only to procrastinate adjudication of the Suit proceedings. The Court below did not find sufficient reasons to allow the

application; and held that there was no necessity to appoint an Advocate Commissioner for recording his cross-examination.

Sri S.Subba Reddy, Learned Counsel for the petitioner, would submit that, while seeking adjournment on 02.02.2015, a medical certificate was enclosed along with the petition filed by the petitioner-defendant; the medical certificate was, therefore, not again enclosed along with the I.A; the Court below was swayed by irrelevant considerations, including that the petitioner had filed a Transfer O.P; and, considering the petitioner's age, the Court below ought to have appointed a Court Commissioner to record his cross-examination at his residence.

On being asked whether a copy of the medical certificate, which the petitioner had filed while seeking adjournment on 02.02.2015, was available Sri S.Subba Reddy, Learned Counsel for the petitioner, has placed a copy thereof before this Court. The said medical certificate merely records that the petitioner was suffering from viral fever and jaundice; and he was advised bed rest for a period of one month from 20.01.2015 to 20.02.2015. It is evident, from the said medical certificate, that the petitioner's illness is not so grave as to disable him from attending the Court for being subjected to cross-examination. While the petitioner is no doubt 70 years old, the fact remains that the respondent-plaintiff is five years older than him, and is 75 years of age.

The power conferred on the Civil Court under Order 26 Rule 1 CPC, to appoint a Court Commissioner, is discretionary; and the Court below is not obligated to appoint a Court Commissioner, in each and every case, for the mere asking. As has rightly been held by the Court below, the illness, which the petitioner claimed to suffering from, is not so grave as to disable him from appearing before the Court, and subjecting himself to cross-examination. I see no reason, therefore, to interfere with the order of the Court below.

The Civil Revision Petition fails and is, accordingly, dismissed. The Miscellaneous Petitions, if any pending, shall also stand dismissed. No costs.

(RAMESH RANGANATHAN, J)

Date:27.03.2015.

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