

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3807 OF 2016

ORDER:

This revision, under Article 227 of the Constitution of India, is filed challenging the Order dated 17.06.2016 in I.A. No.889 of 2016 in O.S. No.358 of 2004 passed by the Principal Junior Civil Judge, Srikakulam, whereby the petition filed under Section 151 of the Code of Civil Procedure, 1908 (for short, 'the Code') to reopen the suit for the purpose of re-entrustment of Warrant to Sri P.Paparao, who was appointed as Advocate-Commissioner, to execute the said warrant, was dismissed, while observing that the petitioners are intending to drag on the proceedings for some more time.

02. Aggrieved thereby, the petitioners filed the present revision alleging that no communication was sent to them regarding the entrustment of warrant by the Court and as such they could not pay Commissioner's fee, but the trial court dismissed the commission petition in I.A. No.470 of 2016 on the ground of non payment of commissioner's fee, while observing that the petitioners' intention to drag on the matter for some more time is without any basis, and requested to reopen the suit for re-entrustment of warrant, pointing out certain illegalities in the order passed by the trial court.

03. Sri P.Kesava Rao, learned counsel for the respondents, has contended that the delay for payment of commissioners fee is not a ground to reopen, but strongly opposed the revision and contending that the petitions before the trial court were filed to protract the litigation for some more time and despite reasonable opportunity afforded to the petitioners for twice, the petitioners did not pay the commissioner's fee.

04. As seen from the material available on record, the Advocate-Commissioner was appointed in I.A. No.470 of 2016 by order dated 28.03.2016, directing the petitioner to pay Commissioner fee Rs.2,000/-. But the petitioners did not pay the

Commissioner fee till 02.06.2016. Later, the trial court directed to petitioners to pay Commissioner fee by 06.06.2016. Even then the petitioners did not choose to pay Commissioner fee. No doubt, the conduct of the petitioners is blameworthy. However, for such mistake, the substantial rights of the parties cannot be effected.

05. However, taking into consideration of the facts and circumstances of the case, I find that it is a fit case to reopen the suit only for limited purpose of re-entrustment of the Commissioner warrant to Sri P.Paparaao, who was appointed as Advocate-Commissioner, and directing the petitioners to pay process fee for issue of commission warrant for re-entrustment and Commissioner fee by 19.08.2016, to get the warrant executed. In case the petitioners failed to comply with the above direction within the time prescribed, the petition shall stand dismissed.

06. With the above the revision is disposed of.

07. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 12.08.2016

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