

HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.2726 of 2016

ORDER:

In this revision, under Article 227 of the Constitution of India, the grievance of respondents 1 to 3 in the Election Petition is that the affidavit of PW-2 filed in lieu of his examination in chief is defective for the reason that the certificate at the foot of the affidavit is not in due compliance with Form-15 under Rule 41 of the Civil Rules of Practice and Circular Orders, 1980, ('Civil Rules of Practice', for brevity). It is also their case that his cross-examination gives rise to a doubt as to whether he understands English language or not and that therefore, the application in IA No. 583 of 2016 is filed by them under Order XIII Rule 3 read with Section 151 of the Code of Civil Procedure to eschew the examination in chief of PW-2 by rejecting his affidavit filed in lieu of examination in chief.

I have heard the submissions of Sri M.M.M.Srinivasa Rao, learned counsel for the revision petitioners/respondents 1 to 3 in the Election Petition and Sri K.Sarala Mahender Reddy, learned counsel appearing for the petitioners in the Election Petition. I have perused the material record. The parties in this revision shall hereinafter be referred to as petitioners and respondents as arrayed in the Election Petition for convenience and clarity.

Since the crux of the matter is about the defect in the certificate at the foot of the chief examination affidavit of PW-2, it is necessary to first refer to the relevant Rule 41 and Form No.15 of the Civil Rules of Practice, which read as under:

“41. Deponent to be identified:-Every person making an affidavit for use in the Court shall if not personally known to the person before whom the affidavit is made, be identified by some one known to him, and the person before whom the affidavit is made shall state at the foot of the affidavits, the name, address, and description of the person by whom the identification was made.

FORM No.15

Rule 41 – Certificate when deponent is unacquainted with the language of the affidavit or is blind or illiterate

Solemnly affirmed or sworn at the office of the ...(Court of the District Munsif of) thisday of before me the contents of this affidavit [or solemn affirmation] [and the exhibits therein referred to] having been first truly and audibly read over to the deponent in telugu he being unacquainted with English [or being blind] who appeared perfectly to understand the same, and made his mark thereto [or signed the same] in my presence.

(Signed) G.H.

(Signed) G.H. (Description)”

During the course of hearing, it is fairly stated that after the affidavit of PW-2 in lieu of his examination in chief was filed, he was administered oath by the Court below and then his examination in chief is taken on record and exhibits were marked and later he was subjected to cross-examination and the cross-examination of PW-2 by respondents 1 to 3 is partly completed. However, on the ground that during his cross-examination the statements made by him give rise to a doubt as to whether he understands English language or not, the subject application is filed pointing out that the certificate at the foot of his affidavit is defective and is not in accordance with the Rule and Form prescribed under the Civil Rules of Practice.

The case of the election petitioners is in the nature of denial and that the petition is intended to drag on the matter.

It is undisputed that the deposition of the witness to the extent indicated supra was recorded by the Court below; however, from the chief affidavit it is apparent that the certification at the foot of the affidavit is not in accordance with the Form prescribed under the Civil Rules of Practice. Be that as it may. Respondents 1 to 3 in the election petition are requesting to eschew the chief examination only by rejecting the affidavit, which is defective for the above reason. If the chief examination is to be rejected, consequently the cross-examination also stands eschewed from consideration as there cannot be any cross-examination without chief examination as per settled law. The trial Court having noticed relevant decisions, has observed that the defect pointed out by respondents 1 to 3 in the election petition in regard to the chief examination affidavit of PW-2 can be cured and it is a curable defect.

Since the cross-examination is partly completed and even according to the respondents 1 to 3 important points are gained in the cross-examination of PW-2 and as the election petitioners are prepared to file a fresh chief affidavit of PW-2 with the same contents, word to word, that is, verbatim contents, after appending a proper certificate at the foot of his fresh affidavit, this Court is of the considered view that the ends of justice would be met if an opportunity is given to cure the defect by filing an affidavit once again with verbatim contents, however, by appending a proper certificate at the foot of the affidavit as required under the Form prescribed under the Civil Rules of Practice.

In the light of the above discussion, the revision petition is disposed of modifying the order of the Court below and directing the election petitioners to file before the Court below a fresh affidavit of PW-2 with verbatim contents, however, appending a proper certificate at the foot as prescribed in the Form and the Civil Rules of Practice. The said affidavit shall be filed as expeditiously as possible and in any event within two weeks from the date of the receipt of a copy of this order. It is needless to state that after such affidavit is filed, the trial Court shall proceed with the recording of the further cross-examination of the said witness, if any. No costs.

Pending miscellaneous applications, if any, shall stand closed.

2nd November 2016

Note: Issue copy by 18-11-2016

(B/o)

ajr

M.SEETHARAMA MURTI, J

