

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2642 of 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed by the Revision Petitioner challenging the Docket Order in O.S.No.1202 of 2013 on the file of X Junior Civil Judge, City Civil Court, Hyderabad, which is as follows:

“ 10.12.2015: Dw.2 present but not examined as plaintiff disputing to marking the documents. Hence adjourned for hearing on marking of documents through Dw.2, call on 04.02.2016.

12-02-2016: Dw.1 absent. Counsel for plaintiff present though the Docket connoted for hearing on marking of documents. On perusal of record and on observing the chief of Dw.2 dt. 23.09.2015, the then Presiding Officer already given finding that the documents cannot be marked. As such, the present Presiding Officer is not appellate authority as such, no new finding can be given with respect to those documents. Accordingly he counsel is directed to mark any further documents or else case be proceeded for cross of Dw.2. Call on 22.02.2016”.

2. As seen from the Docket Order, the Presiding Officer refused marking of the documents tendered in the evidence of defendant witnesses as the Previous Presiding Officer had already gave a finding that the documents cannot be marked. As seen from the Docket Order dt. 10.12.2005, the matter was adjourned to 04.02.2016 for hearing about marking of documents through DW.2. On 04.02.2016, the present Presiding Officer heard both sides regarding marking of documents and then posted the matter for Orders to 12.02.2016. Therefore, on 12.02.2016, the Presiding Officer is supposed to pass an Order regarding admissibility of the

documents through DW.2. Instead of passing an Order about the admissibility of the documents tendered in the evidence of Dw.2, the Presiding Officer passed the impugned Order under challenge.

3. At this stage, the learned counsel for respondent herein drawn the attention of this Court to the Deposition of DW.2, dt. 23.09.2015, wherein the counsel for plaintiff objected for marking o f Ex.B-: Original Notarized Affidavit of Abdul Sattar dt. 13.08.2013 and Ex.B-: Original affidavit of Khaja Bee on the ground that they are not registered documents and hence, the said documents were not marked and the deposition is duly signed by the Presiding Officer. It appears from the Order, for marking the original Notarized affidavit of Abdul Sattar dt. 13.08.2013 and the original affidavit of Khaja Bee, a finding is recorded that the said documents were not marked. The Presiding Officer of the trial Court refused to mark those documents and it is duly signed while recording the deposition of Dw.2. Therefore, the question of considering admissibility of those two documents again by passing a separate Order on 12.02.2016 does not arise. But, however, the other documents can be marked and they were already marked. Therefore, the Order under challenge before this Court regarding admissibility of the Original Notarized affidavit of Abdul Sattar dt. 13.08.2013 and affidavit of Kazabee cannot be interfered in the present revision, in view of the finding recorded by the Presiding Officer of the Court below while refusing to mark those documents in the deposition itself.

4. It is specifically contended by the learned counsel for petitioner that the Order rejecting or marking of the affidavit of Abdul Sattar dt. 13.08.2013 and Khaja Bee was typed by Stenographer though it was signed by the Presiding Officer of that

Court. However, in the Docket Proceedings, it was mentioned that the matter was posted for hearing about the admissibility of the documents. Therefore, this is an error occurred for different reasons and taking advantage of such error, the counsel for petitioner argued that the trial Court did not hear about the admissibility of the documents referred supra. But, as seen from the Order, the Presiding Officer of the trial Court applied his mind and declined to mark those documents. Therefore, the mistake whatever occurred in the Docket Proceedings, is not a ground to revise the Order. At best, the revision petitioner is entitled to question the same by moving an application under Order 13 Rule 3 of CPC, if advised, and on such application, the trial Court may decide such application in accordance with law.

5. On overall consideration of the material available on record, I find no error in the Order under challenge.

6. Accordingly, this Civil Revision Petition is dismissed. However, liberty is given to the revision petitioner to make an application under Order 13 Rule 3 of CPC seeking to re-consider the issue, if permissible under law.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 27-08-2016

eha

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

-

-

C.R.P. No.2642 of 2016

Dt. 27-08-2016

eha.