

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

CIVIL REVISION PETITION No.2314 OF 2016

ORDER:

The present Civil Revision Petition is filed by the defendant in O.S. No.2 of 2010 on the file of Senior Civil Judge, Kamareddy, raising various grounds, but the main ground is that the trial Court overlooked the condition imposed by it on 23.12.2015 and subsequently also, despite granting a chance, PW.1 did not present himself to face the cross-examination on 11.04.2016, and, therefore, the order, dated 06.04.2016, is now challenged.

2. Heard Sri Mohammad Adnan, learned counsel for the revision petitioner, and Sri Jithender Rao Veeramalla, learned counsel for the respondent.

3. Learned counsel for the revision petitioner would contend that by the order, dated 23.12.2015 in I.A. No.122 of 2012, restoration petition, the trial Court imposed two conditions, first is to pay the costs of Rs.400/- (Rupees four hundred only) to the Bar Association, Kama Reddy, and the second that the witness PW.1 shall be present in the trial Court to face the cross-examination, failing which, the petition stands automatically dismissed.

4. However, as could be seen from the order now

under challenge, which is dated, 06.04.2016, the trial Court records thus:

“Pw1 absent both the counsels present the counsel appearing for the defendant filed memo stating that as the plaintiff not complained the order in IA. 122/12 dt:23/12/15. Hence cross examination of Pw1 does not arise. On the other hand the learned defendant counsel present and submitted that on 04-02-16 and on 10-3-16 to which date the suit was posted that P.O is on ½ days leave and submitted that he will pay the cost today and requested to post to some other day considering the situation existed on 4.2.2016 and on 10.3.2016 I am inclined to give adjournment for cross examination, for cross examination of pw1 call on 11.4.2016 on condition to pay cost today itself”

5. Basing on the aforesaid order, it is the submission of the learned counsel for the revision petitioner that the trial Court did not honour its own order and, therefore, to correct the same, the instant revision is filed.

6. On the other hand, learned counsel for the respondent - plaintiff would submit that the costs of Rs.400/- was paid on 06.04.2016 as ordered by the order under challenge and would ensure that PW.1 would be present on the next date of hearing to go with the cross-examination.

7. When viewed in the context of rendering substantial justice, certainly, technicalities get outweighed and, therefore, PW.1 is directed to be present before the trial Court on the next date of hearing and he must make himself available to face the cross-examination at the appropriate time.

8. With the direction as above, the Civil Revision Petition is dismissed.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the revision stand disposed of.

A. SHANKAR NARAYANA, J

July 15, 2016.

PV