

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.4920 of 2016

ORDER:

This Revision is filed challenging the order dt.18-08-2016 in I.A.No.390 of 2014 in O.S.No.217 of 2011 of the Principal Senior Civil Judge, Kovvur.

2. Petitioners are defendants in the above suit. The respondent filed the suit for recovery of amount against petitioners on the basis of a promissory note.

3. In the written statement, the petitioners raised a defence that one Chundru Nava Krishna Chowdary is behind the litigation initiated against petitioners and that the father of petitioners had no financial transactions with the respondent.

4. Petitioners filed I.A.No.390 of 2014 invoking Order XVI Rule 14 r/w Order XVI Rule 3 C.P.C. to summon the said individual as a Court witness.

5. Counter-affidavit was filed by respondent opposing this application and asserting that respondent was in no way concerned with the said individual and that evidence had already been given by respondent as P.W.1 stating that he did not have any relationship with the said individual. It is further stated that the said individual cannot be examined as Court witness because he is not an official witness and if the petitioners wish to examine him, they can examine him as their

witness and he cannot be compelled to be examined as a Court witness. Merely because a defence is raised by petitioners, it was contended by respondent, the Court cannot issue summons to third parties to be Court witnesses.

6. By order dt.18-08-2016, the Court below rejected the said application. It observed that there is no material before the Court to come to any conclusion that the examination of the individual Chundru Nava Krishna Chowdary, who is a third party to the suit, would help the Court to come to a just conclusion in the litigation and if the petitioners feel that his evidence is necessary, they can examine him as a witness and if he refuses to come and depose before the Court, they can request the Court to issue summons.

7. Challenging the same, this Revision is filed.

8. Learned counsel for petitioners contended that the Court below ought to have allowed I.A.No.390 of 2014 since it has discretion to summon any person as a Court witness and placed reliance on the decision of this Court in **D.K.Narasamma and others Vs.G.Renuka Devi¹**.

9. Order XVI Rule 14 C.P.C. states:

“Order XVI - Summoning and attendance of witnesses

...

14. Court may of its own accord summon as witnesses strangers to suit.-
Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it

¹ 2012(2) ALT 675

necessary to examine any person, including a party to the suit, and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document...

10. In the judgment cited by the learned counsel for petitioners, it was held that the Court can exercise this power to summon a person as Court witness only if the Court is satisfied that examination of such witness may be necessary for adjudicating the questions in controversy between the parties, that it is intended in the interests of justice and is aimed at clarifying certain situations and to remove ambiguities.

11. The exercise of power under Order XVI Rule 14 C.P.C. is discretionary and in the absence of any material placed before the Court below that examination of the individual Chundru Nava Krishna Chowdary, who is a third party to the suit, would help the Court to come to a just conclusion in the suit, I am of the opinion that the Court below did not commit error of jurisdiction in refusing to summon the said person as a Court witness. If the petitioners feel that his evidence is necessary to prove their defence, they can have summons issued to him as a witness. If he refuses to come and depose before the Court, then they can request the Court to issue summons and if necessary they can cross-examine him with the permission of the Court.

12. Therefore, I do not find any merit in the Revision and it is accordingly dismissed at the stage of admission. No costs.

13. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 25-11-2016
Vsv/*

