HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.1377 of 2016

ORDER :

In the cross-examination of D.W-1, 10th defendant, by the plaintiff on 18.12.2015 the last but second page regarding the means for purchase of the property in dispute, which is in relation to the suit claim, leave about several suits in relation thereto pending, when a question was put to him the answer given is the following: 'it is true the expenditure for purchasing the suit land was met with from the bank balance of the Company. I got objection for filing the pass book as it contains so many transactions like payment of salary, traveling expenditure. It is not true to suggest that these objections are not objectionable and considerable by the Court. I cannot produce the income tax returns filed by our company during the relevant period. I do not know whether any payment for more than Rs.50,000/- must be made through a cheque only. The suit transaction is the only and final transaction I had entered into. It is not true to suggest that for the sake covering up latches I had created the Penumatsa Estates'.

From this cross-examination according to 10th defendant-D.W-1, there is every necessity to file the documents, even he stated in the cross-examination that he got objection to file the bank pass book and cannot produce the income tax etc, and thus those are required to be received is the version in the application to receive the documents and on opposing the same from the impugned order covered by disposal of said petition, present revision is maintained.

2) It is contested seriously by the plaintiff on several grounds as to same is to wriggle out from the cross-examination admissions without even further re-examination on that point of time but for after lapse of time with deliberations in filing the petition to receive the documents and to depose there upon further and such a course cannot be allowed to be adopted in fairness to justice and the copies cannot be allowed to be filled under the guise that it was suggested in the cross-examination for filing any documents; which the defendants failed to file earlier and in the absence of any cogent explanation for not filed with the written statement from their availability even by then if relevant otherwise, muchless by confronted to the plaintiff, if any, muchless during commencement of the chief-examination of defendant No.10-D.W-1 and thereby sought for dismissal.

3) Both sides placed reliance on the single Judge expressions of this Court. A perusal of those show the expressions were confined to the facts. It is therefrom and by accepting said contention of the plaintiff/respondent to the application in I.A. No.33 of 2016 by impugned order dated 10.02.2016, lower Court dismissed the documents receiving application.

4) Heard and perused the material on record.

5) Undisputedly the further cross-examination of D.W-1 is not completed and it is coming pending after 18.12.2015. It is the settled law that an admission which is clear unambiguous and unexplained can be a basis to the proof, though an admission is otherwise relevant as a fact to corroborate for proof in appreciation of the evidence. It is also the settled law that an admission can be explained away though cannot be withdrawn. The evidence in fact is to be read as a whole. From reading of the facts supra covered by the impugned order, two aspects to be drawn attention, one is he allegedly got objection to the filing of bank pass book, because it reflects several transactions including confidentiality and as to salaries paying to the employees and traveling expenditure and other expenditure shown therein of the entity and the other is regarding income tax returns production asked for, what he stated of he cannot produce. Cannot produce is different from not willing to produce that cannot be ignored of what is demonstrated from the deposition. However, once he is able to produce it could have been received by the lower Court because it is not purely the belated filing without explanation that too when there is a suggestion in the cross-examination and there is an answer inadvertently or otherwise and by giving explanation for it when wanted to file so that the cross-examination answers cannot be taken any advantage if at all there from by the other side. Thus,

ends of Justice subserve if allowed the revision petition subject to costs of Rs.5,000/-.

6) Accordingly, in the result, the revision is allowed setting aside the order of the lower Court and by allowing the petition subject to deposit of costs of Rs.5,000/- to be paid directly to the plaintiff or their advocate, before trial Court to receive and acknowledge within one week from the date of receipt of this order and if not received to deposit to the credit of District Legal Services Authority and file proof within the time fixed by the lower Court.

7) Miscellaneous petitions, if any, pending in this revision shall stand closed. No more costs in the revision.

Dr. B. SIVA SANKARA RAO, J

19.08.2016
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