

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION No. 3268 of 2016

ORDER:

This Civil Revision Petition is filed by the petitioner/defendant No. 1 aggrieved by the order dated 4.2.2016 in I.A. No. 171 of 2016 in O.S.No. 82 of 2012 passed by IV Additional District Judge, Kadapa, YSR District, where under the learned Judge dismissed the petition filed by the petitioner/defendant under Order 11 Rule 14 of CPC read with Section 115 CPC to direct the respondent/plaintiff to produce the original copy of Deed of Dissolution of Partnership alleged to have been executed by defendant No. 1 and the plaintiff which was in the custody of the respondent/plaintiff.

2. The respondent/plaintiff filed O.S.No. 82 of 2012 seeking the reliefs of declaration and injunction and the petitioner/defendant is contesting the suit. While so, the petitioner/first defendant filed I.A.No. 171 of 2016 to direct the respondent/plaintiff to produce the original copy of Deed of Dissolution of Partnership allegedly executed between the petitioner/first defendant and respondent/plaintiff, which was admitted to be within the possession of respondent/plaintiff in his evidence. The respondent/plaintiff filed counter in the said I.A.NO. 171/2016 and pleaded that on verification, he came to know that the document sought for was not available with him. Thereupon, the trial Court passed the short order dated 4.2.2016 which reads as under:

“Counter filed. Heard. Perused the affidavit, petition and counter.

No merits in the petition. Hence, petition is dismissed.”

3. Aggrieved the instant Civil Revision Petition is filed by the petitioner/defendant.

4. Heard learned counsel for petitioner Sri V.R. Reddy Kovvuri and learned counsel appearing for respondent/plaintiff and with their consent, the Civil Revision Petition is disposed of at the stage of admission.

5. Learned counsel for the petitioner would submit that the respondent/plaintiff during his cross-examination on 3.12.2015 had admitted that the original of outgoing partnership was with him and he sent the same to the Sales Tax Department and upon his admission only, he filed I.A.No. 171/2016 to summon the said document from him but in his counter he turned round and stated as if the document was not available with him. The trial Court without considering these facts dismissed the petition with a simple observation that there are no merits in the petition and hence, the said order needs to be revised.

6. Per contra, counsel for the respondent submits that the document was not available with him and as same is made clear in his counter, no direction can be given to him.

7. In the light of the above rival submissions, the point for consideration is whether there are any merits to allow the Revision?

8. As can be seen from the cross-examination dated 3.12.2015, PW-1 (Plaintiff) has stated to the effect that the original of outgoing partnership was with him and he sent the same to the Sales Tax Department and it was true that he has not filed the document evidencing the sending of dissolution of partnership deed to the Sales Tax Department. Probably basing on the said admission, the petitioner/defendant filed I.A No. 171 of 2016 seeking a direction to respondent/plaintiff to produce the said document. However, in his counter of the respondent/plaintiff he made clear that the said document was not available with him.

9. In the above circumstances, it is clear that PW-1 during his cross-examination, has admitted about the existence of the original of outgoing partnership with him and that he produced the same before the Sales Tax Department. Be that as it may, in his counter he took the plea that the said document was not available with him. That whether he genuinely submitted about the absence of the document or he purposefully took the said plea is to be tested with reference to other facts and evidence.

10. Therefore, this Civil Revision Petition is disposed of with a direction to the trial Court that after hearing the arguments of both sides in the main suit and after considering the facts and evidence available on record, the trial Court on merits may take a view as to whether or not an adverse inference under

Section 114(g) of the Indian Evidence Act, 1872, can be drawn against the respondent/plaintiff for non-production of the original outgoing partnership deed said to be executed between him and the first defendant. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 15.11.2016

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