

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

CIVIL REVISION PETITION No. 4064 of 2015

ORDER:

-

This Civil Revision Petition is filed, under Article 227 of the Constitution of India, against the order dated 31.07.2015 in I.A.No.467 of 2015 in O.S.No.13 of 2011 on the file of the II Additional District Judge, Kurnool at Adoni, wherein the petition filed by the petitioner for summoning the listed witnesses, under Order XVI Rules 1 & 5 r/w Section 151 of CPC, was dismissed.

The case of the petitioner is that the respondent herein filed the suit against him and another for specific performance of agreement of sale. Earlier, he filed a petition, under Order XVI Rules 1 & 5 of CPC, for summoning of witnesses and, after due enquiry, the application was dismissed on merits. Challenging the same, the petitioner preferred a revision before this Court and the same was also dismissed with an observation that the petitioner can file a fresh petition by giving proper reasons. Since the date of that order, the petitioner was absconding, as he was involved in a criminal case, and recently, he got anticipatory bail and was released on bail and, as such, he could not file the present petition in time. The petitioner wanted to examine one of the attestors of the suit agreement of sale, the Manager and the retired Manager of State Bank of India, Yemmiganur, the Commissioner, Excise Department, Kurnool, the Commissioner, Yemmiganur Municipality and the Income Tax Officer, Bellary. The said petition was dismissed by the trial Court on 31.07.2015 holding that the said witnesses are not relevant, there is no necessity to summon and examine them, and the reasons and purpose furnished by the petitioner have no force. Being aggrieved by the same, the petitioner filed the present civil revision petition.

A counter is filed in the revision by the respondent/plaintiff stating that earlier, the petitioner filed a petition for the same relief and it was dismissed, against which, he preferred a civil revision petition which was also dismissed with an observation that it is open to the petitioner to file a fresh petition with detailed reasons. Subsequently i.e., after four months, the petitioner filed I.A.No.466 of 2015 for reopening of evidence and another I.A.No.467 of 2015 for summoning of witnesses for examination at the stage of arguments, with a view to drag on the proceedings. But, the present revision petition is filed only against the order in I.A.No.467 of 2015 and the order in I.A.No.466 of 2015 has become final. It is also stated that dragging on the suit almost for four years will cause prejudice and monetary loss to the respondent, as he invested his hard earned money of Rs.23,50,000/-. Therefore, sought to dismiss the revision.

Heard learned counsel for the petitioner as well as learned counsel for the respondent.

The petition is filed for summoning of six witnesses altogether, but during the course of enquiry in the petition, the petitioner himself had given up the witnesses 3 and 4, who are the Commissioner of Excise Department, Kurnool and the Commissioner of Yemmiganur Municipality; as they are not relevant witnesses. The Trial Court dismissed the petition refusing to summon one Bharath Sai, who is said to be one of the attestors of the suit agreement of sale, as the petitioner himself admitted the execution of agreement of sale and receipt of the amount. The trial Court also refused to summon the Manager, State Bank of India, on the ground that it is immaterial to find as to who purchased the pay order/demand draft. The trial Court also refused to summon the Income Tax Officer, Bellary, to know whether the purchase of land under the suit agreement of sale was shown in the income tax returns of the respondent/plaintiff or not, has no bearing on the case of the petitioner/defendant. Similarly, the trial Court

refused to summon one Sivashankarappa, as he is not a party to the suit agreement of sale, and at no point of time, he was in the picture.

The trial Court has given cogent reasons while refusing to entertain the petition. More over, it is to be seen that earlier, a similar petition was filed and the same was dismissed, but it is not stated that the present grounds are in any way different. Further, nearly four months after dismissal of the earlier petition, the present petition was filed, when the suit was posted for arguments and the orders in I.A.No.466 of 2015 filed for reopening of the case became final. When once the orders in I.A.No.466 of 2015 have become final and when the suit was not reopened, the question of summoning the witnesses for examination does not arise.

In view of the above, I do not see any infirmity in the orders passed by the trial Court, warranting interference under Article 227 of the Constitution of India, and as such, the revision is liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any, pending in the revision petition shall also stand dismissed.

A. RAJASHEKER REDDY, J.

28th January, 2016
cbs

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Civil Revision Petition No. 4064 of 2015

28th January, 2016

cbs