

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.3192 of 2016

Order:

Aggrieved by the order of the Trial Court allowing an application for the cross-examination of D.W.1 through an Advocate-Commissioner, the plaintiff has come up with the above revision petition.

2. Heard the learned counsel on both sides.

3. The suit is one for specific performance of an agreement of sale. It is no doubt true that the suit is 16 years old. D.W.1 is also 60 years old.

4. After filing the chief-affidavit and appearing in Court on 18-4-2016, D.W.1 filed an application for examining her through Advocate-Commissioner at Hyderabad on the ground of ill health. It was accepted by the Trial Court and the plaintiff is before me.

5. The impugned order is assailed on three grounds by the learned counsel for the petitioner. The first is that the suit has been prolonged for 16 years, under one pretext or the other and hence this is not a case where the discretionary remedy can be granted.

6. But I do not agree. The longevity of the litigation, is not a ground on which an application of this nature could be tested.

7. The second ground taken by the learned counsel for the petitioner is that the demeanor of the witness has to be seen by the Court. But Order XXVI, Rule 4 C.P.C itself takes care of such a contingency and an Advocate-Commissioner being an officer of Court, is certainly entitled to note down the demeanor of the witness. The entire Code has undergone sweeping changes in the years 1999 and 2002. In an age where chief-examination is permitted through

affidavits, the original philosophy surrounding the noting down of the demeanor of witnesses, has to some extent been diluted.

8. The third ground urged by the learned counsel for the petitioner is that the medical certificate produced by the respondent was for a period of 30 days and that thereafter there was no bar for the respondent to appear.

9. But the above contention loses sight of the fact that the ailment complained by the respondent was of asthma and a knee pain. The nature of the ailments is such that they are progressive and not of such a nature that can be cured at one stroke. Therefore I see no reason to interfere with the order passed by the Trial Court hence the revision is dismissed. However, the respondent, having taken the benefit of the appointment of an Advocate-Commissioner, should ensure that she is available for cross-examination on the day fixed by the Advocate-Commissioner so that the matter is not prolonged any further. The Trial Court shall endeavour to dispose of the suit within 8 (eight) weeks from the date of receipt of a copy of this order. The miscellaneous petitions, if any, pending in this revision shall stand closed.

No costs.

V.RAMASUBRAMANIAN, J.

19th August, 2016.
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19th August, 2016.
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