

HON'BLE SRI JUSTICE RAJA ELANGO

Civil Revision Petition No.3888 of 2016

ORDER:

The present petition was filed questioning the docket order, dated 01-08-2016 passed in O.S.No.171 of 2013 on the file of the II Additional Senior Civil Judge, Kakinada, whereby and whereunder the Court refused to allow the petitioner herein to cross-examine the plaintiff on the ground that the said Court has already struck off the defence of the defendant – petitioner herein.

The grievance of the petitioner herein is that when the Court passed an order directing to struck off defence of the petitioner herein, it does not amount that the petitioner is not having any right to cross-examine the witness, more particularly the plaintiff. Hence, aggrieved over the order, the present Civil Revision Petition is filed by the petitioner.

The learned counsel for the petitioner relied on the decision of the Apex Court reported in ***MODULA INDIA v. KAMAKSHYA SINGH DEO***¹. This Court perused the entire judgment and also the ratio laid down by the Apex Court whereby the Apex Court even in a case of the defence struck down by the Court concerned, allowed the persons (a) to cross-examine the plaintiff's witnesses; and (b) to address argument on the basis of the plaintiff's case. The Apex Court further held that the defendant, who was offered the above said right, would not be entitled to lead any evidence of his own nor can his cross-examination be permitted to travel beyond the

¹ AIR 1989 SC 162

very limited objective of pointing out the falsity or weaknesses of the plaintiff's case. In no circumstances should the cross-examination be permitted to travel beyond this legitimate scope and to convert itself virtually into a presentation of the defendant's case either directly or in the form of suggestions put to the plaintiff's witnesses.

Hence, this Court is of the view the present revision can be allowed on the basis of the above observations of the Apex Court.

Accordingly, the Civil Revision Petition is allowed permitting the petitioner to cross-examine the plaintiff on the basis of the above said observations by the Apex Court. Further, the II Additional Senior Civil Judge, Kakinada, is directed to dispose of O.S.No.171 of 2013 within a period of three months from the date of receipt of a copy of the order. No order as to costs.

Consequently, Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

JUSTICE RAJA ELANGO

Date: 03-11-2016
skmr