

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Civil Revision Petition No.1813 of 2011

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ORDER:

This petition is filed aggrieved by the docket order dated 16.03.2011 passed by the Chief Judge, City Civil Court, Hyderabad, in OS.No.10 of 2008, wherein the Court below took on record the additional chief affidavit of PW1 and also appointed Advocate Commissioner for further cross-examination of PW1.

Learned counsel for the petitioner submits that the cross examination of PW1 was closed and report was also filed by the advocate commissioner on 07.10.2010, and thereafter the petitioner/defendant filed a petition seeking permission to file additional written statement and the said petition was allowed. Thereafter, the respondent/plaintiff filed rejoinder on 22.12.2010 and also filed Additional Chief Affidavit of PW1 without seeking any permission to file the same and without filing any application to recall PW1. Hence, the docket order permitting the petitioner to file the additional chief affidavit and also appointing the Advocate Commissioner to further cross-examine the PW1 is illegal. In support of his contention, the learned counsel relied on Judgment rendered by the Supreme Court in ***K.K.Velusamy v. N.Palaanisamy (2011) 11 SCC 275.***

Though, this Court ordered notice to the respondent while granting stay on 08.07.2011, there is no appearance for the respondent/plaintiff. A perusal of the docket order dated 16.03.2011, of the Court below goes to show that without there being any application seeking permission to file additional Chief Affidavit of PW1, the same was taken on record and advocate commissioner was appointed for further cross examining PW1. In

view of the same, since no application is filed seeking permission, the docket order dated 16.03.2011 is set aside. However, since the petitioner/defendant was permitted to file additional written statement and rejoinder was also filed by the plaintiff for framing additional issues on 22.12.2010, it is open for the respondent/plaintiff to file application under Order-18, Rule-17 CPC if he wants to recall PW1 and on such application being filed by the plaintiff, the Court below may pass appropriate orders on merits in accordance with law.

Accordingly, the CRP is disposed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending in the CRP shall stand closed.

A.RAJASHEKER REDDY, J

29.02.2016
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