

HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.No.5021 OF 2016

ORDER:

Heard counsel for petitioner. None appears for respondent.

Defendant in the suit is the revision petitioner.

The revision is directed against the order dated 28.09.2016 in I.A.No.435 of 2016 in O.S.No.390 of 2012. Through the order impugned in the revision, the trial Court dismissed the application filed by the defendant.

Defendant filed I.A.No.435 of 2016 under Order XXVI Rule 1 CPC seeking appointment of Advocate/Commissioner for recording cross-examination of petitioner/plaintiff's witness (P.W.5). The respondent opposed the prayer in I.A.No.435 of 2016. The trial Court, having regard to the nature of the averments in I.A.No.435 of 2016 and the counter filed by the respondent, held as follows:

"Perused the record. The appointment of Advocate Commissioner to record the evidence at the house of the witness at Bellary which the respondents are not showing their willingness this Court feels that except when the witness is unable to move due to illness or is a parda witness or in exceptional circumstances wherein the caste and customs prohibits, it is not safe to allow examining the witness at her residence as it may raise to some embarrassing situations. No doubt the demeanor of the witness can also be observed when he witness is examined in open Court. Except this contention that she is unable to move due to old age, no proof is filed. The chief affidavit of the witness clearly reveals that she has sworn and signed before the Advocate who attested the affidavit at Nandyal on 26.6.2016. Even by that date the

defendant's evidence is going on. The contention of the counsel for the respondent that the witness was at Nandyal for one month about one week ago. The learned counsel for the respondent also raised his objection contending that as there are no good terms/talking terms visiting the houses on either side between both the parties though both parties are close related, there will be possibility of causing disturbances among the parties. Hence, it is an embarrassing situation for the respondent to go to Bellary to examine the witness in the presence of the other party. Considering the facts and circumstances, this Court do not find any merits to allow the petition".

I have perused the material available on record and taken note of the contentions advanced on behalf of the petitioner. The petitioner failed to point out as to how the errors pointed out now attract the jurisdiction of this Court under Article 227 of the Constitution of India. The learned trial Judge in my considered view has given cogent and sufficient reasons while dismissing the application.

I see no illegality or irregularity in the order under revision. Revision fails and is accordingly dismissed. No costs.

Consequently, pending miscellaneous petitions, if any, also stand closed.

22nd October, 2016

Lrkm

S.V.BHATT, J