

HONOURABLE SRI JUSTICE A.V.SESHA SAI

CIVIL REVISION PETITION No. 5231 of 2016

ORDER:

This Civil Revision Petition filed under Article 227 of the Constitution of India challenges the order dated 20.08.2016 passed by the learned Junior Civil Judge, Kalyandurg in I.A.No.616 of 2016 in O.S.No.93 of 2008 under Order XXVI Rules 1, 2 and 4 read with Section 151 CPC.

Heard learned Counsel for the petitioner.

The respondent herein instituted O.S.No.93 of 2008 on the file of learned Junior Civil Judge, Kalyandurg for permanent injunction. In the said suit, the respondent/plaintiff filed present I.A.No.616 of 2016 under the provisions of Order XXVI Rules 1,2 and 4 read with Section 151 CPC seeking appointment of a Court Commissioner to examine the plaintiff/petitioner therein and record the chief and cross examination at the address mentioned in the petition after issuing notice to Advocates of both the parties. The learned Junior Civil Judge, Kalyandurg by way of order dated 20.08.2016 allowed the said application. The said order is challenged in the present Civil Revision Petition.

It is contended by learned Counsel for the petitioner that the order impugned is erroneous and is a result of improper exercise of jurisdiction vested in the Court below. It is further contended that the facts and circumstances of the case do not warrant

appointment of Commissioner for the purpose of examining and recording the chief and cross examination of the witness. It is further contended that had the contents of the counter filed before the Court below been taken into consideration, the impugned order would not have emanated.

In the above back ground of the case, now the issue that arises for consideration is—“ whether the order impugned is sustainable and whether it warrants any interference of this Court under Article 227 of the Constitution of India.

In the affidavit filed in support of I.A.No.616 of 2016, the respondent/plaintiff stated that he suffered malunated fracture to right hip and underwent surgery twice in the months of March and December, 2015 and thereby suffering with prominent limp and could not walk and travel to attend the Court at Kalyandurgam from Hyderabad for the purpose of giving evidence. He was treated by Dr.Sreekanth Gollamudi of Hyderabad, an Orthopedic Surgeon working in Krishna Institute of Medical Sciences, who certified that he should not travel from Hyderabad to Kalyandurgam. In fact the Court below took into consideration the said aspect and the health condition of the respondent/plaintiff as stated in the affidavit filed in support of the application and also took into consideration that the suit is of the year 2008, allowed the application. It is well settled principle of law that unless the order impugned suffers from any perversity and inherent lack of

jurisdiction, the High Court while exercising power under Article 227 of the Constitution of India should not interfere.

For the aforesaid reasons, the Civil Revision Petition is liable to be dismissed and is accordingly dismissed. Miscellaneous petitions pending consideration if any in the Civil Revision Petition shall stand closed in consequence. No order as to costs.

JUSTICE A.V. SESA SAI

DATED 04TH November, 2016.
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