

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.41 of 2016

ORDER:

This Civil Revision Petition is filed under Section 115 CPC by the petitioners/claim petitioners aggrieved by the order dated 24.11.2015 in E.A.No.114 of 2015 in E.A.No.53 of 2015 in E.P.No.8 of 2014 in O.S.No.36 of 2011 on the file of Principal District Judge, Srikakulam whereunder the learned Judge dismissed the petition filed by the petitioners under Order XXVI Rule 2 CPC for appointment of advocate commissioner to record the cross-examination of the 1st petitioner at her residence in Hyderabad.

2) The said petition was filed on the ground that 1st petitioner underwent operation for her gallbladder and doctor advised her to take bed rest and she cannot come all the way from Hyderabad to Srikakulam for cross-examination and hence an advocate commissioner may be appointed to record her cross-examination at Hyderabad. The learned Judge dismissed the petition mainly on the ground that petitioners have not produced any piece of paper showing that 1st petitioner underwent operation for her gallbladder and she was advised to take bed rest for six months.

3) Heard both sides.

4) Learned counsel for petitioners would submit that it is true that petitioners before the lower Court failed to produce the medical record but the fact is that 1st petitioner underwent operation for her gallbladder and she was advised to take bed rest for six months and she is still under rest and considering the same an advocate commissioner may be appointed on sympathetic

ground for recording her cross-examination and petitioners are ready to bear the expenditure of advocate commissioner and also the respondents and their counsel.

5) Learned counsel for respondents at the inception opposed the petition, but agreed for appointment of advocate commissioner on the condition of petitioners bearing necessary expenditure of the respondents and their counsel.

6) Having regard to the above submissions, this Civil Revision Petition is allowed by setting aside the impugned order dated 24.11.2015 in E.A.No.114 of 2015 in E.A.No.53 of 2015 in E.P.No.8 of 2014 in O.S.No.36 of 2011 and learned Principal District Judge, Srikakulam is directed to appoint an advocate commissioner for recording the cross-examination of 1st petitioner at her residence Door No.35/12, ECIL, Hyderabad. The learned Judge shall fix the charges and fee of the advocate commissioner and also the charges of respondents and their respective counsel to be deposited by the petitioners in advance. The entire exercise shall be completed preferably within a period of one month from the date of receipt of this order. No costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 23.02.2016

Murthy