

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.5272 & 5312 of 2016

ORDER:

The revision petitioner is the plaintiff in O.S.No.2149 of 2009 on the file of XVII Additional Senior Civil Judge, City Civil Court, Hyderabad. There are 2 defendants to the suit. The suit while during under trial in the course of evidence of defendants, the counsel for the plaintiff cross examined DW.1 on 09.09.2016 in the forenoon and the matter was for lunch break passed over to continue after lunch, the counsel for plaintiff failed to attend and the Court closed the evidence by treating no further examination of DW.1. Impugning the same, by seeking to reopen and recall of DW.1, the plaintiff maintained 2 applications in I.A.Nos.845 & 844 of 2016 and those were ended in dismissal by the impugned orders in present revision dated 26.09.2016.

Notice ordered before admission to counsel for respondents/defendants and proof of service to the parties filed through DTDC and also India Post and internet track record of the notice cover delivery submitted and the respondents/defendants failed to attend.

Heard learned counsel for the petitioner/plaintiff and taken as heard the defendants/respondents. Perused the material on record including the affidavit of the learned counsel before the lower Court by name Smt. Shakeela saying on that day afternoon because she was Advocate Commissioner and her evidence was required to be recorded and accordingly attended in E.A.No.373 of 2013 in E.P.No.103 of 2013 on the file of VII Senior Civil Judge, City Civil Court, Hyderabad, she could not continue the cross examination in the afternoon as held up in the other matter. In fact, the observation

of the lower Court is to say no affidavit of said advocate even filed. Once the affidavit is filed, now considered in the revision showing the advocate could not cross examine on that day afternoon as she was Advocate Commissioner to be examined in another matter and held up there and the non cross-examination on that day afternoon, but for that reason, neither willful nor wanton.

Having regard to the above, both the revisions are allowed permitting recall of DW.1 for further cross examination by plaintiff by setting aside the dismissal orders of the lower Court and directing the lower Court to fix a date after receipt of the order for completion of cross examination and subject to costs of Rs.2,000/- payable by the plaintiff to the defendants or to the counsel for the defendants and file proof of payment.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 30.11.2016
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