

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. No.901 of 2016

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.09.12.2015 in I.A.No.1054 of 2015 in O.S.No.359 of 2008 of the III Additional District Judge, Bhimavaram, West Godavari District.

2. Petitioner herein is the plaintiff in the above suit. He filed the said suit for recovery of money against the respondent on the basis of a promissory note.

3. The respondent filed written statement disputing his signature on the promissory note.

4. In view of the pleadings taken by the rival parties, the Court below appointed an Advocate-Commissioner to record the evidence of Hand Writing Expert in Truth Labs, Hyderabad.

5. Before executing the warrant of examination of the said expert witness at Hyderabad, the Advocate Commissioner issued notices to both counsel and parties and requested them to present on 21.11.2015 for cross-examination of the Hand Writing Expert at Hyderabad.

6. One day prior there to i.e., on 20.11.2015 at about 4.00 p.m., the petitioner's counsel gave a memo to the Advocate-Commissioner to postpone the cross-examination. In the said memo, he stated that the petitioner was suffering from typhoid fever for more than a week prior thereto and so he was unable to accompany the advocate for execution of warrant of commission to be held on 21.11.2015 at Truth Labs, Hyderabad, where the

Hand Writing Expert was employed.

7. However, the Advocate-Commissioner proceeded and examined the Hand Writing Expert in the absence of the petitioner and his counsel by recording his cross-examination as nil.

8. The petitioner had prior there to, filed I.A.No.851 of 2015 for examining the Hand Writing Expert in the open Court to know the demeanor of the said witness with regard to his opinion on the promissory note in the suit. The petitioner did not press this application prior to the Court appointing the Advocate-Commissioner to record the evidence of the Hand Writing Expert. The petitioner also did not question the order of the Court appointing the Advocate-Commissioner to record the evidence of Hand Writing Expert at any point of time, and instead he made serious allegations against the Hand Writing Expert to whom document was referred to for opinion stating that his opinion is clouded and full of suspicious findings which can be dispelled in the open Court while noting the demeanor of the witness. It is contended in the said application that if the expert witness is examined in his premises at Truth Labs, Hyderabad, he would definitely exploit the petitioner's counsel during the course of cross-examination.

9. Counter affidavit was filed to this application by the respondent opposing it.

10. The Court below by order dt.09.12.2015 dismissed I.A.No.1054 of 2015 stating that the Advocate-Commissioner had rightly proceeded to examine the witness and the petitioner did not file any proof to show that he was suffering with typhoid fever for the previous one week. It held that he was wantonly dragging the matter without proper explanation. It therefore, held that the

petitioner had no right to reopen the suit to cross-examine the Hand Writing Expert as per his whims and fancies, particularly because the suit is of the year 2008.

11. Though the counsel for the petitioner sought to contend that the order passed by the Court below is incorrect, and that the inability of the petitioner to accompany his advocate to Hyderabad and be present in the examination of the Advocate-Commissioner on 21.11.2015 should have been a ground to allow I.A.No.1054 of 2015, I am unable to agree with the said submission, because the petitioner had filed I.A.No.851 of 2015 to summon the Hand Writing Expert and examine him in the open Court to notice the demeanor, but he did not bother to press it and allowed the Court to pass an order appointing the Advocate-Commissioner to record the evidence of the Hand Writing Expert at Truth Labs, Hyderabad. He did not even question the order of the Court below appointing the Advocate-Commissioner to record the evidence of the Hand Writing Expert at Hyderabad.

12. Once an Advocate-Commissioner is appointed and he recorded the evidence, the petitioner's application I.A.No.851 of 2015 becomes practically infructuous, since the evidence of the witness is completed.

13. The conduct of the petitioner in getting filed a memo on 20.11.2015 at about 4.00 pm., one day before the Hand Writing Expert was due to be examined by the Advocate-Commissioner at Hyderabad, is not bonafide in as much as the petitioner had not filed any proof that he was suffering from any illness preventing him from traveling with his advocate to Hyderabad to examine the witness. Even if the petitioner was suffering from fever, the Advocate of petitioner could have gone and cross-examined the

witness. Since the suit is of the year 2008, the attempt of the petitioner to drag on the suit in this manner cannot be encouraged. I therefore do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

14. Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs.

15. Consequently, miscellaneous petitions pending, if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

01st July, 2016

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