

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

—
CIVIL REVISION PETITION No.4119 of 2015

ORDER:

Heard the learned counsel for petitioner. Even though notice was tried to be served on the respondent, the respondent has not claimed it and hence it was returned to the sender.

2. The petitioner herein is the wife who filed F.C.O.P.No.1140 of 2010 on the file of the Family Court-cum-V Additional District Judge, Visakhapatnam (for short, trial Court) against the respondent herein seeking return of articles given to her at the time of marriage with the respondent. When the trial in the said petition was going on, the petitioner filed memorandum of understanding (MOU) dated 12.03.2012 and it was marked as Ex.A.2. She wanted to examine elaborately the persons mentioned in the said MOU, and for that purpose, she filed I.A.No.1606 of 2015 praying the trial Court to issue summons to them. The respondent filed a counter stating that the said MOU was entered during the pendency of the above OP and the items mentioned in the schedule annexed to the said OP are not covered in the said MOU.

3. The trial Court dismissed the application, by its order dated 31.08.2015, with the following observations.

“As could be seen from the contents of the petition and counter it is admitted fact that Memorandum of understanding dated 12.03.2012 was marked as Ex.A.2, which was alleged to be entered during the pendency of the OP and which, respondent vehemently denied by through in Ex.B.2 notice and it was also admitted by the petitioner/Pw.1 in her cross-examination that the amounts and schedule annexed to the main OP were not covered in Memorandum of Understanding dated

12.03.2012 under Ex.A.2. Hence, this petitioner/PW.1 has no need to summon the above named persons Sri G.Satya Srinivasa Rao and Sri Adari Apparao to prove case because her case is not covered in Memorandum of Understanding dated 12.03.2012 because the schedule annexed to this petition is not also mentioned in Ex.A.2 i.e., MOU. Moreover, after cross-examination PW.1, it is not just and reasonable to summon them because the respondent has to examine, after his examination if at all the respondent denied the MOU dated 12.03.2012 under

Ex.A.2 thereafter only the petitioner/wife can summon the above named persons to prove his MOU under Ex.A.2 but at this stage it is cannot be summon them. There was no any denial from the respondent except under Ex.B.2. Hence, I am of the considered view at this stage there is no need to summon Sri G.Satya Srinivasa Rao and Sri Adari Apparao and the petitioner is at liberty to summon them after examination of the respondent, if it is required.”

Challenging the said order, the present Civil Revision Petition is filed.

4. Admittedly, the petition was filed by the petitioner seeking return of articles. Though the MOU was entered during the pendency of the FCOP, since the said MOU was marked as Ex.A.2, she wanted to examine the persons connected with the said document. The right of the petitioner to examine the persons in order to prove Ex.A.2, which was already marked, cannot be denied.

5. In the circumstances, the impugned order of the trial Court dated 31.08.2015, is set aside and the Civil Revision Petition is allowed. No order as to costs. Miscellaneous Petitions, if any pending, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 27.01.2016
TJMR