

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.5080 of 2016

ORDER:

Proof of service of respondent filed and there is no representation in person or through advocate. Heard the learned counsel for the revision petitioner/plaintiff.

In the suit for recovery of money filed against the defendant, pending trial there was an application filed under Order XVI Rule 6 CPC by the plaintiff seeking the trial Court i.e., XIII Additional Chief Judge, City Civil Court, Hyderabad, to summon the Branch Manager of State Bank of Hyderabad, Adilabad, for production of certain documents to show there is embezzlement of funds of plaintiff entity by the defendant beneficiary through the Then Chairman of the plaintiff entity. The documents sought for are to show the amounts are transferred to the account of the defendant from the source of plaintiff's entity. The application was ended in dismissal in I.A.No.448 of 2015 by the impugned order of the lower Court dated 05.03.2016. The observation of the lower Court that Xerox copies of the bank account filed and it is submitted of certified copies applied and bank forwarded to Head office with covering letter. The petitioner has to obtain the bank statement from the Bank and whether applied or not, not mentioned in the affidavit, thereby the petitioner at liberty to obtain document through application and without any such efforts the petition deserves consideration in dismissal. In fact Rule 129 clause (3) of the Andhra Pradesh Civil Rules of Practice and Circular Orders 1990 (for short 'the Rules') mandates as Bank is also entitled under the bankers book of Evidence Act to grant certified copy

which are within the meaning of Section 78 of the Indian Evidence Act to obtain certified copies and file and if no such certified copy is granted by rejecting with endorsement or otherwise original is required for purpose of summoning to the proof of lis as rightly observed for his affidavit petition is imperfect in relation to any of the facts which are mandatory to be averred apart from entitled to certified copy, thereby there is nothing to interfere but for giving liberty to the petitioner to file a better affidavit petition subject to compliance of the requirement of Rule 129 (3) of the Rules for the trial Court to consider after hearing on own merits out of the compliance as otherwise by showing the requirement of the record from the bank is necessary for the lis.

Accordingly and in the result, the revision petition is disposed of.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 26.12.2016
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