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HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Civil Revision Petition No.1587 of 2016

ORDER:

This Civil Revision Petition is filed against the order, dated 09-03-2016 passed in I.A.No.12 of 2016 in I.A.No.80 of 2012 in R.C.C.No.22 of 2010, wherein the Court below dismissed the application filed by the revision petitioner under Order 26, Rule 10(3) of Civil Procedure Code to scrap the Advocate Commissioner's Report submitted in the above I.A.No.80 of 2012 and re-direct the said Advocate Commissioner or appoint another Advocate Commissioner to inspect the petition schedule shop with the help of the Municipal Engineer or Government R&B Engineer and to give his report with regard to condition of the said building.

The brief facts which are necessary for disposal of the revision are that the respondent-landlord filed the R.C.C. No.22 of 2010 for eviction and one of the ground was that the petition schedule building was suffered damage in flood during 2009 and it is in dilapidated condition and required renovation, otherwise it would be collapsed. The respondent-landlord also filed I.A.No.80 of 2012 for appointment of an Advocate Commissioner to note down the physical features/condition of the subject building and the said application was ordered and accordingly Advocate Commissioner also filed his report and further he was examined as C.W.1 and the person who

assisted the Advocate Commissioner was examined as C.W.2.

According to the petitioner, C.W.1 and C.W.2 have admitted in their cross-examination that they have not submitted the report as per the directions given in I.A.No.80 of 2012, as such, the report filed by the Advocate Commissioner is misleading and therefore the petitioner filed I.A.No.12 of 2016 to redirect the same Advocate Commissioner or appoint another Advocate Commissioner to inspect the petition schedule shop. The court below dismissed that application holding that the petition is filed only to drag on the proceedings and that already C.W.1 and C.W.2, the Advocate Commissioner and Municipal Licence Engineer who assisted the Advocate Commissioner respectively were cross examined.

The learned counsel for the petitioner submits that once the Advocate Commissioner has not carried out the direction of the Court, fresh direction has to be issued for re-inspection of the building as per the Order 26 and Rule 10 of C.P.C.

On the other hand, the learned counsel for the respondent submits that already Advocate Commissioner and the Municipal Licence Engineer who assisted him have been examined and as such, the Court below has rightly dismissed the application filed by the petitioner-tenant.

Now, in this case, it has to be seen that the respondent-landlord filed I.A.No.80 of 2012 and at his instance the Advocate Commissioner was appointed to note down the physical features of the subject building and the Advocate Commissioner has filed the report taking assistance of the

Municipal Licence Engineer and both of them were also examined as C.W.1 and C.W.2 and the Court below found that when once they were examined, the question of scrapping of report of Advocate Commissioner as sought by the petitioner does not arise. If, according to the petitioner-tenant, Advocate Commissioner has not carried out the directions given by the Court below, the same will be taken note of while disposing of the R.C.C. The court below in its discretion has found that fresh inspection is not required, since the Advocated Commissioner's report is before the Court. If in the cross-examination, Advocate Commissioner has admitted anything in favour of the petitioner-tenant, it is for him to raise the same at the time of final disposal of the R.C.C. The R.C.C. is of the year 2010. The Court below also found that the present petition is filed only to drag on the proceedings. Order 26, Rule 10 C.P.C. does not provide for scrapping of Advocate Commissioner's report. In view of the same, I do not find any merit in the Civil Revision Petition and this petition is only filed to drag on the proceedings.

Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

Consequently, miscellaneous petitions pending, if any, in the civil revision petition shall stand closed.

A. RAJASHEKER REDDY, J

Date: 20-04-2016

SKMR