

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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Civil Revision Petition No.1878 of 2016

ORDER:

This revision, under Article 227 of the Constitution of India, is preferred against the order passed by the 1st Senior Civil Judge, City Civil Court, Hyderabad in I.A.No.1356 of 2013 in O.S.No.1426 of 2010 dated 17.02.2016. O.S.No.1426 of 2010 was filed by the petitioner herein questioning his transfer from Hyderabad to Kolkata. I.A.No.1356 of 2013 was filed by the petitioner-plaintiff, under Order 16 Rule 14 CPC, to summon Sri N.Ramesh, Deputy General Manager (6th respondent), for examining him as a Court witness.

In the order under revision, the Court below held that the witness sought to be summoned was not a party in person to the Suit proceedings, but had signed the written statement in his capacity as the Deputy General Manager who is the 6th defendant in the Suit; he also filed the counters in both these applications in his capacity as a Joint General Manager; the petitioner had sought to summon the said person to give evidence only for the reason that he had signed the written statement, and had prosecuted the other interlocutory applications on behalf of the Corporation; the petitioner had not made any allegation against Sri N.Ramesh by name, but had only stated that, after the 5th defendant took control of HDFC, he had planned to disturb and dislocate the services of the petitioner without assigning any proper reasons; he had sought a declaration that the transfer letter dated 04.05.2010, issued by the 4th defendant, was illegal and arbitrary; he had also sought perpetual injunction to restrain the defendants from giving effect to the said transfer order; the defendants had examined the Assistant Manager, Human Resources Department as DW.1 who was working in the head office of the Corporation; the order of transfer was issued by the General Manager, Human Resources Department, HDFC Limited-4th defendant; merely because Sri N.Ramesh had signed the written statement and the

counters in I.As, or for the reason that he had prosecuted the Suit on behalf of the other defendants, it could not be said that, without the evidence of the said person, the petitioner would be put to prejudice in deciding the *lis* because there was no allegation against Sri N.Ramesh in person; even otherwise, there was no pleading that Sri N.Ramesh was behind the action of the defendants in trying to dislocate the petitioner from the Hyderabad office, and to get him transferred to Kolkata branch; and it was also not the case of the petitioner that only Sri N. Ramesh had knowledge of the reasons for his transfer or the proposal to dislocate him from Hyderabad office and to get him transferred to Kolkata branch.

Sri B.Venkat Rama Rao, Learned Counsel for the petitioner-plaintiff, would place reliance on **V.V.V.Lakshmi Narayana v. Athukuri Nageshwara Rao**^[1] and **National Insurance Co. Ltd. v. M/s.Susru Sea Foods**^[2], to contend that exercise of discretion by the Court below, in refusing to summon Sri N.Ramesh as a Court witness, suffers from a patent illegality; Sri N.Ramesh had not only signed the written statement, but had also signed the counters filed in the interlocutory applications; the evidence of Sri N.Ramesh was essential; and as the order passed by the Court below suffers from a patent illegality, this Court should interfere in proceedings under Article 227 of the Constitution of India.

On the other hand Sri B.Srinivasa Rao, Learned Counsel for the respondents, would contend that the power conferred on the Court to summon a witness as a Court witness is discretionary; the discretion exercised by the Court below does not suffer from any patent illegality; the petitioner had questioned his transfer from Hyderabad to Kolkata in the said Suit; he had admitted, in his evidence, that his appointment was not only contractual, but the order of appointment stipulated that he could be transferred anywhere in India; and, in such circumstances, exercise of discretion by the Court below did not necessitate interference.

Both in **V.V.V.Lakshmi Narayana**¹ and **National Insurance Co.**

Ltd², the jurisdiction of this Court was invoked, under Article 227 of the Constitution of India, by the person whom Court below had summoned as a Court witness; and this Court held that the power conferred, under Order 16 Rule 14 CPC, to summon a witness included the defendant; and where the Court finds that examination of a particular person as a court witness is necessary, it cannot be said that exercise of discretion to summon the witness is patently illegal necessitating interference in proceedings under Article 227 of the Constitution of India.

As noted hereinabove, the Court below has elaborately discussed the issue, and has come to the conclusion that summoning of Sri N.Ramesh who had merely signed the written statement in the Suit, and the counters in I.As, in his official capacity as a Deputy General Manager, and against whom no allegations were made either in the Suit or in the I.As, was wholly unnecessary. Exercise of discretion by the Court below, in the facts and circumstances of the present case, cannot be said to suffer from any patent illegality nor has the petitioner been able to show as to how failure to summon Sri N.Ramesh as a Court witness has resulted in substantial injustice to him. I see no reason, therefore, to interfere with the order under revision in the proceedings under Article 227 of the Constitution of India.

The Civil Revision Petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J.

Date:29.07.2016.

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^[1] AIR 2004 A.P. 192

^[2] 2005 (1) ALT 297