

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4357 of 2014

ORDER:

The revision petitioner is the defendant in O.S.No.29 of 2009 on the file of Senior Civil Judge, Piler, Chittoor District. In the suit during trial PW.2 is the official witness i.e., MRI deputed by MRO, Sodum Mandal to give evidence with reference to the records sought for by the plaintiff and the witness was produced and deposed on 10.10.2014. However, on that day for neither defendant nor his counsel could present including the Court waited till 03.40 PM treated with no cross examination. It is not only that from the plaintiff report no further evidence, defendant's evidence is also closed by the trial Court. It is impugning the same, I.A.No.558 of 2014 filed by the defendant for recall of PW.2 for further cross examination and it is fact not in dispute that the matter posted for arguments closing the defendant's evidence even there is no separate application filed for seeking permission of the defendant's evidence. Said order of the lower Court by closing the defendant's evidence is per se unsustainable, but for if at all to close the cross examination of PW.2 by treating nil as defendant not chosen to cross examine. Coming to the petition ended in dismissal by the impugned order dated 10.11.2014 concerned, it is the observation of the lower Court, the allegation of the party was suffering from ill-health and could not contact advocate cannot be believed so also of the advocate entrusting file to another advocate to represent and not chosen to represent for no affidavit of said advocate even filed. However the fact remains that in the evidence of the MRO-PW.2 there are 25 documents

marked and those with reference to which the defendant has to cross examine, a perusal of the record shows earlier also for the witness summon time taken by the plaintiff, but for on that day defendant was not diligent. Once such is the case, shunning of the opportunity is totally unsustainable, but for at best permit by imposing costs.

Having regard to the above, the Civil Revision Petition is disposed of and the impugned dismissal order dated 10.11.2014 of the lower Court is set aside by permitting the cross examination of PW.2 by the defendant subject to costs of Rs.3,000/- payable by the defendant to the petitioner and the plaintiff shall bear the costs of the official witness out of it and the balance the plaintiff can take towards costs and the trial Court shall fix an early date for PW.2 evidence and also for defendant's evidence to proceed with the matter.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 28.12.2017
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