

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.4020 of 2010

ORDER :

This revision is filed by the petitioner/plaintiff, aggrieved by the order dated 12.08.2010 in I.A.No.205 of 2010 in I.A.No.569 of 2009 in O.S.No.280 of 2008 passed by the IV Additional Senior Civil Judge (FTC), Vijayawada.

2. Heard the learned counsel for the petitioner/plaintiff and taken as heard the respondent, who is defendant in the said suit, since served failed to attend.

3. The revision petitioner and respondent herein are the plaintiff and defendant respectively in O.S.No.280 of 2008. In the said suit, the defendant was set ex parte and an ex parte decree was passed. To set aside the ex parte decree, application in I.A.No.569 of 2009 under Order IX Rule 13 C.P.C. filed by the defendant along with a doctor certificate stating he was sick and could not attend and the decree passed ex parte is liable to be set aside for the sufficient cause in not prosecuting the matter earlier. In that application filed under Order IX Rule 13 in I.A.No.569 of 2009 as respondent to it, the plaintiff filed I.A.No.205 of 2010 being the petitioner under Order XIX Rule 2 C.P.C. to

summon the doctor, who issued medical certificate for cross examination and the same was dismissed on 12.08.2010. Impugning the same, the present revision is filed and obtained stay of proceedings in I.A.No.569 of 2009 on 24.09.2010 and the stay order originally granted is for eight weeks and there is no extension subsequently. There is nothing even to show the proceedings of I.A.No.569 of 2009 after eight weeks to 24.09.2010 from which there is no stay were ended in disposal of I.A.No.569 of 2009 or not.

4. Even coming to the impugned order, the written arguments filed by both the sides were perused by Court below and observed that the so called sickness of the defendant is false and the doctor is to be summoned, who issued the medical certificate for cross examination as per the petitioner/plaintiff and the provision under Order IX Rules 1 and 2 C.P.C. cannot be invoked for not a deponent, the doctor who issued the certificate. In the trial Court, the decision in AIR 1972 SC 330 is referred and it is observed that the decision has no application and which is final disposal of the Industrial Disputes Act matter.

5. In fact, on the scope of Order XIX Rules 1 and 2 C.P.C., this Court elaborately dealt with in C.R.P.Nos.2548 and 2551 of 2014 (Nadella Estate Pvt. Ltd., Hyderabad v.

Prema Ravindranath and 297 others). For more clarity, with reference to the expression, the very Order XIX speaks, any facts may be proved by affidavit and affidavit of any witness may be read at the hearing and where it appears to the Court that either party bona fide desires the production of a witness for cross examination, such witness can be produced, an order shall not be made authorizing the evidence of such witness can be given by affidavit in such an event. That Order XIX Rule 1 C.P.C is in main matters. So far as the interim orders concerned, Order XIX Rule 2 C.P.C. speaks upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent. Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court, or the Court otherwise directs. Rule 3 speaks, so far as the interlocutory applications concerned it need confined to own knowledge, as statements of affidavits can be admitted on belief. Rule 2 gives description on the Court, whereas, Rule 1 speaks mandatory for the Court because the trial as per Sections 134 to 137 of the Evidence Act and without cross examination evidence is not complete and full-fledged. But in interlocutory application, disposal of applications concerned, the affidavits can be considered and there can

be no mini trial, thereby, description is conferred on the Court if at all to summon any witness, if there is any necessity as laid down in Nadella Estate Pvt. Ltd., Hyderabad (supra).

6. Having regard to the above, there is nothing to interfere with the impugned order of the lower Court, particularly, that too, when doctor not given any affidavit to call for, but, only a certificate and what the defendant stated he was sick and relied on the certificate of the doctor in support of it. It is not even the case of the petitioner/plaintiff to summon the defendant/petitioner in I.A.No.569 of 2009 for cross examination of his version of his sickness to test the truth or otherwise of the veracity of the statement on credibility.

7. Accordingly, with the above observations, the Civil Revision Petition is disposed of for nothing to interfere.

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

Dr. B. SIVA SANKARA RAO, J

Date:20-11-2017
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