

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.587 OF 2016

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the docket order dated 02.12.2015 passed in I.A.No.875 of 2015 in O.S.No.29 of 2014 on the file of the Court of the XVI Additional District and Sessions Judge, Nandigama.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. A perusal of the record reveals that the respondent filed O.S.No.29 of 2014 on the file of the Court of the XVI Additional District and Sessions Judge, Nandigama, for specific performance against the petitioner. After examination of PWs.1 and 2, the petitioner herein filed I.A.No.875 of 2015 in O.S.No.29 of 2014 to recall PW.2 for the purpose of further cross-examination. The trial Court disposed of the said petition on 09.10.2015 on payment of costs of Rs.500/- to PW.2 by the petitioner. For one reason or other, PW.2 did not present before the trial Court.

4. Learned counsel for the petitioner, in all fairness, submitted that no batta was paid for issuance of summons to PW.2. On 02.12.2015, the trial Court passed the docket order directing the petitioner herein, who is the defendant, to get the presence of the witness even by taking coercive steps. The petitioner herein filed a memo before the trial Court to direct the respondent/plaintiff to

take coercive steps to secure the presence of PW.2 and the same was rejected.

5. It is the duty of the petitioner herein to pay process for issuance of summons to PW.2. For the reasons best known, the petitioner did not choose to pay process for issuance of summons to PW.2. The Court ought not to have directed the petitioner herein to get the presence of PW.2 even by taking coercive steps.

6. Having regard to the facts and circumstances of the case, the order of the trial Court to the extent of directing the petitioner herein to get the presence of PW.2 even by taking coercive steps is set aside. The trial Court is hereby directed to proceed with the matter in accordance with law.

7. Accordingly, the Civil Revision Petition is disposed of. There shall be no order as to costs.

8. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 24.01.2017
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