

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CRP No.5932 OF 2016

ORDER:

This revision is preferred against the order dated 23-09-2016 passed in IA No.328 of 2016 in OS No.6 of 2008 by the I Addl. District Judge, Karimnagar, dismissing the IA filed under Order 16, Rule 2 CPC to summon the witness.

2. Plaintiffs-petitioners herein filed IA No.328 of 2016 seeking to summon one Dr. Noorul Ameen Mohammed Ishack who is admittedly not shown in the list of witnesses filed by the petitioners. The only reason assigned by the petitioners to examine him in this case is that he had witnessed the negotiations between the plaintiff and the respondent-defendant in respect of sale of the suit premises and suit business and the truth or otherwise can be elicited from him and; as such his evidence is necessary for proper adjudication of the matter.

3. Sri Ch. Purnachandra Rao, learned counsel for the petitioners contended that the Court below ought to have adopted a liberal approach by permitting the witness to be

examined in the interest of justice. It is also contended that the proposed witness is a material witness to prove the commercial transaction leading to the execution of the registered sale deeds which are sought to be cancelled under Section 31 of the Specific Relief Act. It is also contended that no prejudice would be caused to the respondent by allowing the witness to give evidence and in fact it will clinch the real controversy in the matter.

4. Sri P. Lakshma Reddy, learned counsel for the respondent, on the other hand, contended that except stating that the witness has to be examined to elicit the truth which is a general reason shown, no purpose that is sought to be achieved is mentioned in the affidavit for examining the proposed witness, who is to be called for Malaysia. Learned counsel also contended that no cause muchless, sufficient cause is shown to call for the said witness to give evidence. In support of his contention, learned counsel relied on the decision of this Court in **THIMMARAJU SHYAMA SUNDER RAO vs. THIMMARAJU JITTENDER RAO (2007 (4) ALD 20)** & **NASEEMA vs. B. NAGESWARA REDDY (2008 (2) ALT 577.**

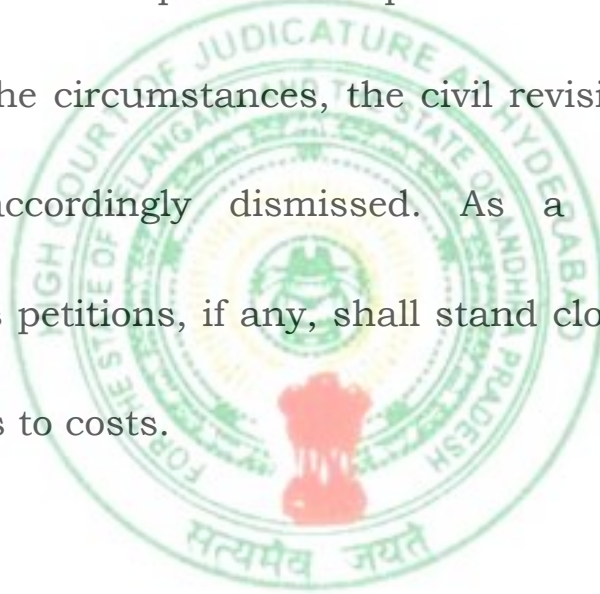
5. Parties to the suit proceedings are required to file the list of witnesses under Rule-1 (1) of Order 16 CPC whom they intend to examine in support of their case. Sub-Rule (3) of Rule 1 of Order 16 CPC enables the party to call a witness and seek issuance of summons to the proposed witness not mentioned in the list of witnesses, on showing sufficient cause for the omission to mention the name of such witness in the list of witnesses. It is settled proposition of law, that no party to the suit can as a matter of right seek for issuance of summons by the Court to a person who is not shown in the list of witnesses. Discretion is vested in the Court to permit a party to summon a witness whose name does not appear in the list.

6. A plain reading of sub-Rule (3) of Rule 1, Order 16 CPC it is clear that if the party shows sufficient cause for omission to mention the name of such witness in the list of witnesses furnished, in exercise of discretion vested in it, the Court can permit the party to examine the witness not figured in the list of witnesses. What constitutes “sufficient cause” is again

depends upon the facts and circumstances of the each case. Codified dictionary meaning of the words, “sufficient cause” means cause that is deemed enough to provide an excuse under the law. The person sought to be examined by the petitioners is said to be present at the time of negotiation, but he is not a party to any document nor stood as witness to any document which are sought to be cancelled by the petitioners. Except stating that the person is a crucial witness, nothing is specifically stated what evidence is going to be elicited through him. When once he is not added in the list of witnesses, examination of such a witness subsequent thereto, the petitioners should plead specifically how non-examination of such witness will have an impact on the real controversy in issue. The proposed witness was very much known to the petitioners and he could be have included the list of witnesses on earlier occasion as well. In the cases of ***Thimmaraju Shyama Sunder Rao and Naseema*** (supra) it was observed by this Court that if an application is filed at a belated stage and if just reasons are not explained, Court would be justified in refusing to summon the witness. It was also observed that

to summon a witness not mentioned in the list of witnesses, party must give reasons for his failure to so mention and seek permission of the Court.

7. No reasons are mentioned to exercise the discretion vested in the Court and allow the witness to give evidence except stating that truth will be elicited from him. In my considered view such an averment would not amount to “sufficient cause” to permit the petitioners to examine the witness. In the circumstances, the civil revision petition fails and it is accordingly dismissed. As a sequel thereto, miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.



A.RAJASHEKER REDDY, J

Dated: 10-02-2017
NRG

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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Date: 10-02-2017

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