THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2980 OF 2016

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.527 of 2015 O.S.No.41 of 2011 dated 04.02.2016 passed by the Senior Civil Judge, Piler, dismissing the application for return of documents under Order XIII Rule 9 C.P.C, alleging that the petitioner deposited title deeds creating mortgage by deposit of title deeds in favour of the first respondent/bank in the suit and also pledged gold ornaments as security for the debt due.

However, one of the co-surety discharged the entire debt due to the bank and filed a counter claim in view of Section 146 of Indian Contract Act to claim contribution against the co-surety, who is equally liable to pay the debt along with other co-surety, which is pending for adjudication before the Court, though the said debt is discharged.

Petition under Order XIII Rule 9 C.P.C is not maintainable, since it is not a document filed in Court and sought for return of the same. Whether it is mortgaged or not, the remedy is otherwise under the provisions of Transfer of Property Act and Order XXXIV C.P.C for return of the documents and gold ornaments, either by the debtor or by the surety after discharge of the debt due to the creditor.

After arguing the matter for a while, Sri V. Surendra Reddy learned counsel for the petitioner, requested this Court to direct the Senior Civil Judge, Piler, to decide O.S.No.41 of 2011 along with the counter claim filed by the co-surety.

In view of the specific request made by the learned counsel for the petitioner, I deem it appropriate to direct the Senior Civil Judge, Piler, to decide O.S.No.41 of 2011 along with the counter claim filed by the co-surety, as expeditiously as possible, in any event not later than six months from the date of receipt of copy of this order, without touching the merits of the case.

With the above direction, civil revision petition is disposed of

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:19.07.2017
SP

Note: Issue copy by 26.07.2017
b/o
SP