

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No.529 of 2017

ORDER:

1) Aggrieved by the order, dated 28.11.2016, passed in I.A.No.1035 of 2016 in O.S.No.134 of 2015 on the file of the Additional Senior Civil Judge, Tirupati, wherein an application filed under Section 151 of C.P.C. to set aside the order of eschewing the evidence of PW.2, dated 02.11.2016, was dismissed, the petitioner, who is plaintiff in O.S.No.134 of 2015, filed the present Civil Revision Petition.

2) The petitioner herein is the plaintiff and the respondents herein are the defendants in O.S.No.134 of 2015. For the sake of convenience the parties hereinafter referred to as arrayed in the suit.

3) The facts in issue are as under:

The plaintiff filed O.S.No.134 of 2015 seeking injunction restraining the defendants and their men from interfering with their peaceful possession and enjoyment over the plaint schedule property. In the said suit, the plaintiff examined himself as PW.1. One C.Munikrishnaiah, has filed his affidavit in lieu of chief-examination as PW.2 and the said suit was posted for cross examination of PW.2 by the defendants on 26.10.2016 and subsequently it was posted to 02.11.2016. As PW.2, who is aged

about 68 years old, suffering with high blood pressure and was admitted as in-patient in the hospital, the plaintiff failed to produce the said witness on 02.11.2016. Since PW.2 failed to appear before the Court, the trial Court eschewed the evidence of PW.2 and closed the evidence of plaintiff's side. Immediately on 09.11.2016, an application came to be filed seeking to set aside the order eschewing the evidence of PW.2 on the ground that the plaintiff would be put to irreparable loss and injury if the order is not set aside. The said application came to be rejected, against which the present Civil Revision Petition is filed.

4) The main ground urged by the learned counsel for the petitioner is that grave prejudice would be caused to the plaintiff if the evidence of PW.2 is eschewed from consideration.

5) A perusal of the material placed before the Court would show that one witness by name C. Munikrishnaiah filed his affidavit in lieu of chief-examination as PW.2 and it was posted to 26.10.2016 for his cross-examination by the defendants and thereafter it was posted to 02.11.2016. On that day, all the advocates boycott the Courts and the counsel for the plaintiff was also not present in the Court. Since PW.2 was not present in the Court and as there was no representation on behalf of the plaintiff, the trial Court eschewed the evidence of PW.2 and closed the evidence of plaintiff. In the absence of any documentary evidence to show that PW.2 was suffering with high blood pressure and was bed ridden, the Court below rejected the

request made. It is to be noted that PW.2 could not be present before the Court as he was bedridden and hospitalized. Apart from that the record also discloses that on that day, the advocates boycott the Courts and none of the counsels were present in the Court.

6) Having regard to the above, the order under challenge is *set aside* and the trial Court shall fix a date for cross-examination of PW.2 and proceed thereafter in accordance with law.

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

8) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

07.04.2017
gkv



JUSTICE C. PRAVEEN KUMAR