

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.3203 of 2017

Order:

Heard learned counsel for the petitioner.

The petitioner herein is the defendant in O.S.No.166 of 2012 on the file of the Senior Civil Judge, Chirala, Prakasam district. The said suit was filed by the respondent herein for recovery of an amount of Rs.3,83,680/-. The petitioner herein filed a written statement. The petitioner earlier filed I.A.No.640 of 2016 to summon the Accountant/Clerk of the College in order to prove Exs.B1 to B8 and the said application was allowed, but the said Clerk refused to take the summons and the petitioner did not take any further steps, but filed the present application in I.A.No.71 of 2017 seeking issuance of summons to the Principal of the same College. A counter was filed by the respondent herein stating that the suit was an identified one and was also part-heard as DW.1 was already cross-examined and the matter was coming up for arguments. Taking the circumstances into consideration, the trial Court dismissed the application by an order dated 05.06.2017, challenging which the present Civil Revision Petition is filed.

This Court carefully perused the affidavit filed in support of the application and noticed that the petitioner did not indicate any reason for not pursuing the earlier application I.A.No.640 of 2016 which was allowed by the trial Court at that point of time. Now it is evident that the cross-examination of DW.1 completed and the suit is coming up for arguments. The plaintiff in her plaint stated that the defendant's son attested as first attester on the promissory note dated 05.04.2012 for Rs.2,80,000/- as it was useful for his educational expenses. The petitioner herein wanted to disprove the said averment by stating that her son's yearly fee was

Rs.7,000/- to Rs.10,000/- and the College was situated not less than 3 KMs., hence there was no need to borrow such huge amount. In those circumstances, it is for the plaintiff to prove the plaint averments and the burden is on her. The trial Court dismissed the application with the following order.

“This is a suit based on a promissory note for recovery of suit amount with further interest and costs. It is found that the defendant side has marked Ex.B1 to B8, they are college fee payment receipts. Thereafter the defendant side has filed I.A.No.640/16 so as to summon the account clerk of the said college, which issued fee receipts, for the cause production of the relevant documents of Ex.B1 to B8 and to give evidence. The Court allowed the said IA and issued summons to the concerned account clerk. But the said summons was refused by the concerned account clerk. In the said circumstances, without taking any steps against the said account clerk, to secure his presence in the Court, the present petition is filed by the defendant for summoning the Principal of the said Engineering College, for cause production of the relevant records of Ex.B1 to B8 and to give evidence. It is pertinent to note that the said fee receipts Ex.B1 to B8 are neither material documents nor the evidence of proposed witness is material in the suit filed by the plaintiff basing on promissory note. Moreover, if the defendant is permitted to file this type of petitions one after another, without taking any steps to secure the presence of already summoned witness, it causes unnecessary delay in disposal of the suit which is filed for recovery of money, besides causing hardship to the plaintiff. Accordingly, this Court finds no merits in the petition.

Hence this petition is dismissed. There is no order as to costs.”

Learned counsel for the petitioner by placing reliance on a decision reported in *Ashok Sharma v. Ram Adhar Sharma*¹, submits that the Court cannot decline the examination of witnesses or taking the documents on record.

In the present case the petitioner was not denied any opportunity during the trial stage and she filed the present application, without pursuing the earlier application which was allowed in I.A.No.640 of 2016 to its logical end, at the stage of arguments. Since the suit was an identified suit of the year 2012, this Court sees no reason to interfere with

¹ (2009) 11 SCC 47

the discretionary order passed by the trial Court and the Civil Revision Petition is, accordingly, dismissed. There shall be no order as to costs.

As sequel thereto, the miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 18.08.2017

Nsr

