

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

Civil Revision Petition No.1360 of 2017

ORDER:

The revision arises out of an order passed by the trial Court dismissing an application under Order 26 Rules 9 and 10A of the Code of Civil Procedure.

2. Heard Mr. S. Krishna Mohan, learned counsel for the petitioner.

3. The petitioner filed a suit for recovery of money based upon a contract that they were entrusted with by the respondents. During the pendency of the suit, the petitioner filed an application for appointment of a retired Chief Engineer to settle the claims. The said application was rejected on the ground that the application was taken after 7 years and that no commissioner can be appointed to gather evidence. It is against the said order that the petitioner is before the Court.

4. The trial Court was right in rejecting the application, for the simple reason that the petitioner actually did not seek appointment of a Commissioner. The petition was filed under Order 26. The provisions of Order 26 Rule 10A are confined to the issue of a commission for scientific investigation. But what the petitioner actually sought was the appointment of somebody actually to go into the validity of his claim and to record findings. What the petitioner sought was virtually the appointment of a Mediator or a Conciliator or an Arbitrator, and hence, the Court was justified in dismissing the application under Order 26. Therefore, the Civil Revision Petition is

dismissed. It will be open to the petitioner to seek the aid of the Court to invoke Section 89 CPC, if both parties are willing to take recourse to one of the methods of Alternate Dispute Resolutions stipulated therein.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 05-06-2017

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