

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CRP Nos.3794 & 3798 of 2017

COMMON ORDER ::

These two civil revision petitions arise against the docket order dated 27-06-2017 passed by the II Addl. District Judge, Jagitial, Karimnagar District, in OS No.2 of 2007 and OS No.7 of 2007 respectively. The petitioner is 4th defendant in the suits. The petitioner is impleaded in the suits as D-4, by virtue of the orders of this Court passed in CRP Nos.6310 & 6365 of 2012. The petitioner made a counter claim in suits against the co-defendants. Since the parties are same in both the matters, they are heard together for being disposed of.

2. Learned counsel for the petitioner-4th defendant submits that after impleadment as D-4 in the suits OS Nos.2 and 7 of 2007, the petitioner sought to cross-examine PW-1 and DW-1 and for that purpose filed memos on 6-9-2016 and on 16-11-2016, but the Court below by the impugned docket order observed that petitioner did not secure the presence of PW1 and thereby flouted the order of the Court dated 16-6-2017 and, therefore, treated the right to cross examine PW1 as nil, which is bad in law and against the directions of this Court passed in CRP Nos.6310 and 6365 of 2012 whereby the petitioner was impleaded as D-4.

3. On the other hand, learned counsel for the plaintiff-1st respondent contends that inasmuch as the petitioner made a counter claim, it is for him to secure the presence of the PW-1 to prove of his and as counter claim is independent of the suit claim, the counter claim of the petitioner will have to be tried separately.

4. Admittedly, as seen from the memos filed by the petitioner-D-4 and the reply memos filed by the plaintiff-1st respondent, out of the two witnesses *i.e.* PW-1 and DW-1, DW1 (V. Murali) is stated to have expired on 09-02-2013 and as regards the other witness, PW-1 who was earlier employed with the plaintiff-Company is stated to have left the Company. Earlier the plaintiff in the reply memos filed stated that PW-1, after leaving the plaintiff-Company, left to San Francisco, USA, and under those circumstances, the Court below directed the petitioner to summon him (PW-1) under Order 16, Rule 2 CPC.

5. But it is to be seen and as has been contended by the petitioner's counsel, the plaintiff-1st respondent expressed its intention to examine PW-2, vide memo dated 14-06-2017 and in the said memo it was stated that PW-1 is residing at Hyderabad. The case of the petitioner is also that PW-1 is residing in Hyderabad. It is to be seen that the plaintiff-1st respondent has

already filed a memo to re-examine PW-2, there cannot be any plausible reason in not examining the witness PW1, who was in their employment, more particularly when he is stated to be residing in Hyderabad and not in USA.

6. In the circumstances, the impugned docket orders in both the revision petitions are set aside. The Court below is directed to appoint an advocate Commissioner for cross examination of the PW-1, as expeditiously as possible, on costs payable by the petitioner for such purpose.

7. The counter claim though is independent of the claim of the plaintiff, inasmuch as the claim of the plaintiff as also the claim of the petitioner is against defendants 1 to 3, the claims are *inter-se*, the parties are same, the claims relates to the same transaction, it is expedient that they should be tried together.

8. With the above directions, the civil revision petitions are disposed of accordingly. Miscellaneous petitions, if any pending in cases shall also stand disposed of. There shall be no order as to costs.

A. RAJASHEKER REDDY, J

Dated: 06-10-2017
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