

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.4848 of 2017

ORDER:

The Order in I.A.No.453 of 2017 in O.S.No.624 of 2010, dated 04.08.2017 passed by the learned I Additional Senior Civil Judge, Nellore is challenged before this Court.

2) As can be seen from the order under revision, the Court below cannot be found fault for dismissing the application filed by the petitioners-defendants, as they were not diligent in making themselves available for cross-examination, in spite of the opportunity being given. The record discloses that initially, petitioners-defendants were set *ex parte* on 11.07.2011 and it is only on 23.01.2017 i.e., after lapse of seven years, the said *ex parte* order was revoked giving an opportunity to the petitioners to adduce evidence. Thereafter, though the petitioners had filed affidavit-in-chief, failed to offer themselves for cross-examination. Considering the same, the Court below had closed the evidence of the petitioners-defendants on 22.06.2017. Once again, an application was made seeking to provide an opportunity to adduce evidence on their behalf. Learned counsel for the petitioners, on the same day, had agreed for allowing the petition subject to the condition that the defendants would come into the witness-box for cross-examination. Considering the non-readiness on the part of the defendants-petitioners, the said Interlocutory Application came to be dismissed.

3) In the facts of the present case, there is hardly any error either jurisdictional or on facts on the part of the Court below, in

dismissing the said I.A. However, considering the fact that the suit is filed by the plaintiff-respondent No.1 seeking specific performance of an agreement of sale, involving the property rights, giving an opportunity to the petitioners, as a last chance, to present themselves for cross-examination on terms would serve the interest of justice.

4) In those circumstances, subject to the condition of the petitioners-defendants paying a sum of Rs.2,500/- to the respondent No.1-plaintiff and also subject to the condition of the petitioners making themselves available cross-examination on the date fixed by the Court below, the Civil Revision Petition is allowed.

5) Consequently, miscellaneous petitions pending, if any, shall stand closed.

Date:03.11.2017

CHALLA KODANDA RAM, J.

Note: Issue CC to the 1st Addl.Senior
Civil Judge, Nellore, forthwith.

B/o
Ssv