

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

CIVIL REVISION PETITION Nos.777 AND 1409 of 2017

COMMON ORDER:

Aggrieved by the orders passed in the interlocutory applications in I.A.Nos.1114 and 1113 of 2016 in O.S.No.383 of 2006 by the Senior Civil Judge, Vizianagaram, these two revision petitions are filed by the petitioners/plaintiffs against the respondents/defendants.

2. This is a common order passed in the above interlocutory applications filed by the plaintiffs. The plaintiffs have filed the aforementioned suit for specific performance of agreement of sale with an alternative prayer for refund of earnest money with interest. In the said suit the first defendant has not been examined as a witness. Therefore, the plaintiffs have filed the above two applications, one for the reopen of the evidence and other for recall of the first defendant as a witness. The trial court dismissed those two applications with an observation that non-examination of the first defendant as a witness is not fatal to the case of the plaintiffs, as the court may draw an adverse inference for non-examination of the first defendant as a witness.

3. The learned counsel for petitioners and the respondents have not disputed about the said proposition of law. It is a fact that the first defendant has not been examined as a witness in this case. The

trial appears to have been completed. The trial Court felt that there is no need to examine first defendant by reopening the case and recalling him as a witness. It is also of the view that as per the facts and circumstances of this case, the court can draw an adverse inference in this case.

4. It is pertinent to refer to the appropriate legal provision in this regard. As per section 114(g) of the Indian Evidence Act, 1872, the court may presume certain facts. For better appreciation section 114(g) is extracted hereunder:

“114. Court may presume existence of certain facts.- The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.”

Clause (g) reads as under:

(g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

5. The plaintiffs filed the interlocutory applications to summon the first defendant as he has not been examined as a witness before the trial Court. It appears that the first defendant is not willing to give his testimony. There cannot be a testimonial compulsion as it is in violation of Fundamental Rights of an individual. No person can be compelled to testify against his will. The trial Court has properly appreciated the said fact and dismissed the applications with an

observation that the plaintiffs can have the remedies available under law, including advancing the arguments with regard to seeking the Court for drawing an adverse inference.

6. It is pertinent to note that as per Section 14(g) of the Indian Evidence Act, as referred above, the Court can draw an adverse inference under certain circumstances. Therefore, non-examination of the first defendant may lead to adverse inference, if the circumstances of the case warrants.

7. In view of the facts and circumstances of the case, the trial Court may draw an adverse inference depending on the facts and circumstances of the case for non-examination of the first defendant in the suit. Therefore this court is of the considered view that there are no valid grounds to interfere with the order passed by the trial court.

8. In the result both the revision petitions are disposed of accordingly.

Miscellaneous petitions, if any pending, in these revisions shall stand closed. There shall be no order as to costs.

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GUDI SEVA SHYAM PRASAD, J

Date: 21.07.2017

Note: L.R. Copy to be marked

(B/O)

INL/Msr