

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.5871 and 5893 of 2016

COMMON ORDER :

The two revisions came for hearing before admission and before notice to the respondents and from the hearing chosen to dispose off at this stage for no necessity of keeping the matters pending by admission, much less to delay the trial of the suit proceedings. Hence, the revisions are disposed of as follows:

2. Aggrieved by the orders in dismissing the two applications to reopen and to examine the Bank Manager as a court witness in I.A.Nos.998 and 999 of 2016 in the pending suit O.S.No.600 of 2006 on 28.09.2016 by the IX-Additional Chief Judge, City Civil Court, Hyderabad, (for short, 'the lower Court') the 1st defendant filed the two revisions. The impugned orders of the lower Court, particularly at para 9 observe that the affidavit petition no way discloses whether the petitioner approached the Bank to obtain copies of the records as required by Rule 129 of the Civil Rules of Practice for he should initially obtain such record and if Bank not furnished the particulars, then only he has to ask for.

3. There is nothing illegality in the impugned order. In fact, Rule 129(3) of the Civil Rules of Practice clearly speaks that unless certified copy applied and rejected or original is required to produce, a party is not entitled to seek production of documents from Bank or any Public Office, much less to examine any witness with reference to it. Further, examination of court witness is not right of a party, but the

discretion of the Court and the right of the parties is to cross-examine and such court witness if chosen by court to examine. Even Court can summon and cause examine any person as a court witness from the very wording of Order XVI Rule 14 C.P.C., any party to the lis who has not chosen to come to witness box, leave about the right of the parties to seek to draw adverse inference therefrom as contemplated by Section 114 of the Indian Evidence Act. Once such is the case, for the examination of a court witness, it is only by filing an application and bringing out any necessity in the affidavit petition of any party and nothing beyond as it is the power of the Court to be exercised from the Order XVI Rule 14 C.P.C. and Section 165 of the Indian Evidence Act.

4. Here, therefrom there is nothing to interfere with the impugned order. However, the remedy is left open to the petitioner to comply with the requirement of Rule 129 clause (3) of Civil Rules of Practice and file fresh application, if necessary, to summon the Bank Manager to produce the originals to give evidence with reference to it or to obtain certified copies and file it and if other side opposes, then from any necessity of the original be required, so to summon the original. Needless to say, the examination as a court witness, if at all required, a better affidavit petition can be filed for that is always left open in exercise of the discretionary power by Court from any necessity made out.

5. Even the suit proceedings are at the argument stage, it is needless to say, unless arguments are heard and matter reserved for judgment or posted for judgment, application for reopening of the matter is not required. Hence, reopen application even dismissed, there is no need to interfere but for so to clarity. Hence, the revisions are disposed of by giving liberty to file fresh application, if necessary for summoning to produce documents if able to show certified copies applied and refused or original is required and for any necessity to examine any Bank official with reference to it and for that unless the suit matter is reserved or posted for judgment there is no need to file reopen application.

6. Miscellaneous petitions pending in both the revisions, if any, shall stand closed. No costs.

Dr. B. SIVA SANKARA RAO, J

4th January 2017.

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