THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.6100 OF 2017

ORDER:

Heard both sides.

2. Perused the grounds urged in the revision petition and the impugned order of the lower court dated 19.09.2017 in I.A.No.541 of 2017 in pending suit O.S.No.234 of 2009. On the application filed by the plaintiff invoking Order XVI Rules 6 and 7 to issue summons to the Branch Manager of SBI, Shamsheer Gunj, to produce the receipts, work orders and bills and Municipal Permission copy, income tax returns pertaining to respondent before the court. His case is that he being the plaintiff completed the entire construction work of the house of the respondent for which the respondent/ defendant failed to pay the amount and recovery of which he filed the suit.

3. The respondent/defendant opposed the petition stating those are no way relevant and the plaintiff is nothing to do with the loan availed by the defendant from the bank and already plaintiff side Exs.A1 to A16 marked and the evidence is closed and the petition is liable to be dismissed.

4. The impugned order of the lower court says from Para 6 that the suit is filed for recovery of the amount and the suit is coming for further cross-examination of D.W.1 from closure of

plaintiff's evidence and it is not the case of the plaintiff that the defendant is also signatory to the so-called bills or receipts and even document summoned from the bank no useful purpose will be served as defendant denied the documents and petitioner/plaintiff is nothing to do with regard to availment of loan from the bank by the defendant, thereby, the petition is liable to be dismissed.

5. No doubt, the order was dated 19.09.2017. As per the cross-examination further of D.W.1 recorded on 06.04.2017 about the 5½ months before that he deposed that 'it is true, I obtained house loan from the SBI, Shamsheer Gunj bank, to construct the house. The plaintiff gave some bills to me and they were given to the said bank and said bank gave entire house loan amount after submission of relevant documents. The said bank gave final instalment amount to me at the time of 20% of the construction work is pending. I have objection to call for house loan record pertaining to me from the concerned bank. It is not true to suggest that plaintiff completed work as per the agreement …. '.

6. The lower court did not consider properly this aspect in saying defendant simply denied the documents. In fact, defendant admitted about plaintiff given the documents about the completion of the construction and produced before the bank what he denied is to his consent to produce the documents from the bank.

7. No doubt, initially, in the suit filed in the year 2009 from the construction agreement of 2007 after exchange of notices between the parties in October 2008 plaintiff should have been filed the application for appointment of a Commissioner to note down the physical features if any. Undisputedly there was an application for appointment of a Commissioner and the trial court directed both parties to bear the Commissioner fees of Rs.2,500/- each and the matter went in revision and revision ended in dismissal against the order of the lower court appointing Commissioner and Commissioner not even visited the property and noted the physical features so far, though evidence of both sides by now stated completed.

8. Having regard to the above, that application is there, Commissioner is appointed, thereby, leave about the controversy as to defendant also stated deposited the amount of Rs.2,500/- towards his half share of the Commissioner fees; if not deposited, plaintiff be directed to deposit that said amount or pay to the commissioner, direct to entrust the warrant to the commissioner to execute by the court by virtue of this order if any useful purpose being served. Subject to that once it is controversy on giving of the bills and receipts by the plaintiff to the defendant, even admitted by the defendant in his cross-examination, leave about those are really on completion of work or without even completion of

the work obtained for purpose of securing the loan to facilitate the defendant is the matters on factual aspects if at all further to prove, trial court should have been allowed the application to summon the documents as plaintiff cannot obtain the documents from the account of the defendant produced by him even by invoking Bankers Books of Evidence Act.

9. Having regard to the above, the petition is allowed, directing the trial court to summon the bank manager to produce the record and any relevant record out of it to be exhibited is by substitution with Photostat certified copy for the originals to take back by the bank after giving of evidence.

10. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

DR.B.SIVA SANKARA RAO, J

29.11.2017
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