

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

CIVIL REVISION PETITION No.6396 OF 2017

ORDER:

Defendant Nos.4 and 5 in O.S.No.08 of 2007 on the file of the Court of the V Additional District Judge, Kurnool at Nandyal are the petitioners in the present revision.

2. Heard Smt V.Dyumani, learned counsel for the petitioners, and Sri K.Rathanga Pani Reddy, learned counsel for respondent No.1/plaintiff, apart from perusing the material available before this Court.

3. Respondent No.1 herein instituted the above mentioned suit for specific performance of contract of sale. According to defendant Nos.4 and 5, they are the subsequent purchasers. In the said suit, the petitioners herein filed I.A.No.500 of 2017 under the provisions of Section 151 of the Code of Civil Procedure, 1908, praying the Court below to reopen the defendants' side evidence and to record petitioner No.1's evidence as D.W.3 in the suit. The plaintiff/respondent No.1 herein did not file any counter opposing the application. The learned Additional District Judge, by way of an order, dated 26.10.2017, dismissed the said application. Hence, the present revision.

4. According to the learned counsel for the petitioners, the order impugned is erroneous and contrary to law and having regard to the nature of suit and the substantial rights of the parties involved, the learned Judge ought not to have rejected the request of the petitioners herein. It is the further submission of the learned counsel that the reasons assigned by the learned

Judge for dismissing the application cannot be sustained in the eye of law.

5. On the contrary, it is vehemently contended by the learned counsel for the plaintiff/respondent No.1 herein that there is no error nor there exists any infirmity in the impugned order and in the absence of the same, the order passed by the learned Judge does not warrant any interference of this Court under Article 227 of the Constitution of India. It is the further submission of he learned counsel that in order to show the illness, as pleaded by the petitioners, the petitioners herein did not file any medical certificate, as such, the Court below is perfectly justified in dismissing the application.

6. Now the issue that emerges for consideration is:

“Whether the order passed by the Court below is sustainable and tenable or whether the same warrants any interference of this Court under Article 227 of the Constitution of India?”

7. Admittedly, the present suit is for enforcement of a contract of sale in respect of an extent of Ac.0.72 cents in Sy.No.429/1 pyki situated within the limits of Nandyal Municipality, Kurnool District. The petitioners herein claim to be the *bona fide* purchasers for valuable consideration. It is very much evident from the properties mentioned in the plaint schedule that the plaint schedule property is a valuable property situated within the limits of Nandyal Municipality. Therefore, substantial rights of the parties are obviously involved in the matter. In the affidavit filed in support of the present application, the petitioners herein stated that when the matter was posted for the evidence of defendant

No.4 on 21.09.2017, because of illness, he could not give evidence on the said date, which resulted in closure of evidence. The petitioners herein also stated that chief affidavit was prepared on 05.10.2017 and the affidavit further discloses that the same was enclosed along with the present application. It is also clear from the affidavit that the deponent is a senior citizen and is a physically challenged individual. Therefore, the Court below should have given opportunity to the petitioners herein to lead the evidence. As mentioned supra, since valuable rights of the parties are involved and having regard to the reasons mentioned in the supporting affidavit, this Court is inclined to give one opportunity to defendant No.4 – Cumbum Venkata Krishna Rao by fixing a date.

8. For the aforesaid reasons, the Civil Revision Petition is allowed, setting aside the order, dated 26.10.2017, in I.A.No.500 of 2017 in O.S.No.08 of 2007 passed by the Court of the V Additional District Judge, Kurnool at Nandyal. Consequently, I.A.No.500 of 2017 in O.S.No.08 of 2007 is allowed and defendant No.4 is permitted to file chief affidavit and get ready for cross examination by the other side on 18.12.2017. There shall be no order as to costs.

9. Miscellaneous Petitions pending, if any, in this Civil Revision Petition shall stand closed.

JUSTICE A.V.SESHA SAI

Date : 08.12.2017

Note:-

Furnish C.C. on 11.12.2017.

B/O
AMD

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI



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Date: 08.12.2017

AMD