

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.5845 of 2017

Order:

The petitioner, who is the defendant in a suit for recovery of money on a promissory note, has come up with the above revision challenging the rejection of his application by the Trial Court, to eschew the Affidavit-in-Chief of the plaintiff and also to reject the evidence sought to be tendered by the plaintiff's Power of Attorney Holder.

2. Heard Mr. K.Goverdhan Reddy, learned counsel for the petitioner.

3. The suit was on a promissory note. The plaintiff filed his Affidavit in lieu of chief-examination. But he did not appear for cross-examination. The Court passed a conditional order on 20-7-2016 to the effect that if the plaintiff did not appear on the next date of hearing, suit will be dismissed.

4. After such a conditional order was passed, the plaintiff filed an application seeking permission to be represented by his mother, as Power of Attorney Holder. That application was allowed and the mother filed an Affidavit.

5. Thereafter, the petitioner/defendant filed an application in I.A.No.14 of 2017 for rejecting the Affidavit of the plaintiff's Power of Attorney Holder and to eschew the Chief Affidavit of the plaintiff. This application was dismissed by the Trial Court forcing the petitioner/defendant to come up with the above revision.

6. Insofar as the question of eschewing the Affidavit of the plaintiff is concerned, the law is well settled. If a person who files an Affidavit in lieu of his chief-examination, fails to appear before Court, it stands automatically eschewed. The petitioner/defendant need not have filed an application, seeking the obvious to be restated.

7. Insofar as the second contention is concerned, the case of the petitioner is that the Power of Attorney Holder will not have personal knowledge. If that is so, the petitioner should have taken advantage and proceeded with the trial so that this point could have been urged and the suit itself could have seen its logical end. Taking out an interlocutory application at this stage, can virtually jeopardise the case of the petitioner himself. Therefore, the civil revision petition is dismissed, leaving it open to the petitioner to raise the issue with respect to the admissibility of the evidence of P.W.2, as a Power of Attorney Holder in cases of this nature. The miscellaneous petitions, if any, pending in this revision shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

03rd November, 2017.
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