

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2509 OF 2011

ORDER:

This civil revision petition is filed under Article 227 of Constitution of India challenging the docket order dated 28.06.2011 passed in I.A.No.442 of 2011 in O.S.No.378 of 2005 by the XI Additional Chief Judge (Fast Track Court), City Civil Court at Hyderabad, whereby the Court below dismissed the petition filed under Order XXVI Rule 1 of Code of Civil Procedure (for short "C.P.C.")

Now, the petitioner has to be cross-examined in the Court itself in the presence of Presiding Officer of the Court. The difficulty expressed by the petitioner is that, the petitioner is suffering from ill-health and he is not in a position to climb the staircase to enter into the Court hall to give evidence. Therefore, the orders passed by the Court below is erroneous and prayed to set aside the order by appointing advocate - Commissioner or redirecting the same Commissioner, appointed earlier, to complete his cross examination.

Undisputedly, the suit is of the year 2005 and the order under challenge was passed in the year 2011, dismissing the petition, which is filed to appoint an advocate-Commissioner for the purpose of recording the continuation of cross-examination of D.W.1. The only difficulty expressed by the learned counsel for the petitioner is that, the witness is not in a position to climb the staircase to appear before the Court. Accepting the same, the Trial Court appointed an advocate Commissioner. But, at this stage, when the witness was not examined for a long period of 8 months by the respondent herein, the Court discharged the Advocate commissioner rightly. In such case, the contention of the learned counsel for the petitioner to appoint another Commissioner or redirect the same Commissioner to execute the warrant

cannot be accepted by this Court. At best, the Court can record the cross examination of the witness DW-1 as 'NIL', if the witness was not examined on production. Even today, the difficulty expressed by the learned counsel for the petitioner is that the petitioner is not in a position to climb the staircase to appear before the court for tendering himself for cross-examination. If the suit is pending before the Senior Civil Judge, City Civil Court Hyderabad, there are two lifts provided in the complex, i.e. one for the officers and another for the litigant public. In such case, the petitioner need not climb the staircase to appear before the Court tendering himself for cross examination. If, for any reason, the suit is pending before the Court which is not located within the main building of the City Civil Court, Hyderabad, the petitioner may apply for withdrawal of the suit pending before the XI Additional Chief Judge, City Civil Court at Hyderabad and transfer the same to any other Court, and on such application, the Chief Judge, City Civil Court, Hyderabad may consider the request of the petitioner, if any, or otherwise, the Chief Judge may exercise power under Section 24 of C.P.C. suo motu to withdraw the suit pending on the file of XI Additional Chief Judge, City Civil Court at Hyderabad and transfer the same to another Court which is located in the ground floor of the main building or adjacent to the Court located, enabling the petitioner to appear before the Court for tendering himself for cross examination.

With the above direction, the present civil revision petition is disposed of. No costs.

Consequently, miscellaneous applications pending if any, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

28.02.2018
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