

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.242 OF 2018

ORDER :

Heard counsel for revision petitioner and Sri K.S.Murthy,
Counsel for 2nd respondent/2nd defendant.

2. Petitioner has filed this Revision assailing the docket order dt.05.01.2018 in I.A.No.1809 of 2017 in O.S.No.107 of 2007 of the III Additional District Judge, Tirupathi.

3. Petitioner herein is the plaintiff in the above suit. The said suit was filed for a declaration that the plaint schedule properties were nominally purchased in the name of defendants from and out of the amounts received by them from the petitioner/plaintiff and for recovery of a sum of money from the defendants.

4. Written statement was filed by the 1st respondent/1st defendant denying the suit claim. The 2nd respondent/2nd defendant filed a memo adopting the written statement of the 1st respondent/1st defendant.

5. Subsequently, plaint was also amended and additional written statement was also filed by the 1st respondent, which was also adopted by the 2nd respondent.

6. After completion of evidence on the petitioner/plaintiff's side, the respondents/defendants adduced evidence of DW1 and

evidence of defendants 1 & 2 was closed and the matter was posted for evidence of defendants 4 to 6 on 09.10.2017.

7. Thereafter, on 27.11.2017, the 2nd respondent/2nd defendant filed an application under Order VIII Rule 1(A)(3) of CPC for grant of leave to file certain documents.

8. The said application was numbered as I.A.No.1809 of 2017 on 30.12.2017 and was posted for counter to 05.01.2018.

9. On 05.01.2018, the Court below allowed the said application on payment of costs of Rs.1,000/- on the ground that the petitioner did not file counter.

10. Aggrieved by the said order, this Revision is filed.

11. Counsel for petitioner contends that counter affidavit was ready and was under typing, and it was filed in the afternoon session on 05.01.2018 itself, but the Court below did not take it into account on the ground that it had already disposed of the I.A. in the morning session itself.

12. Counsel for petitioner contends that after the I.A. was numbered on 30.12.2017, 05.01.2018 was the date of first adjournment, and the Court below could not have passed orders on the same day without waiting for the counter of the petitioner.

13. Though counsel for 2nd respondent supported the order passed by the Court below, having regard to the fact that the

I.A. was coming up for the first time, after it was numbered, only on 05.01.2018, though it had been filed on 27.11.2018, I am of the opinion that an opportunity should be given to the petitioner to contest the said I.A.

14. In this view of the matter, the order dt.05.01.2018 in I.A.No.1809 of 2018 in O.S.No.107 of 2007 of the III Additional District Judge, Tirupathi is set aside; the said I.A. is remanded back to the said Court; and the said Court is directed to pass a fresh order, after considering the contents of the counter affidavit filed by the petitioner to the said I.A. and after hearing all the parties, within a period of two (02) weeks from the date of receipt of a copy of this order.

15. The Civil Revision Petition is allowed as above. No order as to costs.

16. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

27th March, 2018.

Note: Issue C.C. in two days.

B/o
gra