

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.480 of 2018

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed by the petitioner/1st respondent assailing the order, dated 21.08.2017, of the learned Senior Civil Judge, at Huzurnagar, passed in I.A.No.133 of 2015 in E.O.P.No.09 of 2014.

2. I have heard the submissions of Sri V.V.Satish, learned counsel appearing for the revision petitioner/1st respondent, and of Sri V.Brahmaiah Chowdary, learned counsel appearing for the respondents. I have perused the material record.

3. The 1st respondent in the Election O.P. filed the afore-stated interlocutory application under Order 18 Rule 17 read with Section 151 of the Code of Civil Procedure, 1908, praying to recall P.W.1 for further cross-examination *inter lia* stating various grounds in support of the said request. The said application was resisted by the applicant in the Election O.P. by filing a counter. By the order impugned, the Tribunal dismissed the petition. Therefore, the 1st respondent in the Election O.P. is before this Court.

4. The Tribunal dismissed the petition only on the ground that several opportunities were granted to the 1st respondent to cross-examine P.W.1 and that the said opportunities were not availed and, therefore, the petition is not *bona fide* and that the grounds urged in support of the request are also vague.

5. Learned counsel for the petitioner would submit that on account of the ill-health of the sister, the 1st respondent in the Election O.P. has to rush to Hyderabad and as such, he could not know the result of the petition in I.A.No.110 of 2015 and that, therefore, he had knowledge of the dismissal of the petition only on 15.04.2015 and that the Election Petition was posted for further cross-examination of P.W.1 on his behalf and that the counsel for the 1st respondent was also busy with other cases at Kodad and Khammam Courts and as such the counsel also could not attend the Court and that, therefore, there are valid reasons for non-attendance of the 1st respondent before the Election Tribunal and, hence, an opportunity ought to have been granted by the Tribunal by recalling P.W.1 for further cross-examination.

6. Learned counsel for the respondent herein i.e., the applicant in the Election O.P. stated that the petitioner did not avail several opportunities granted by the Tribunal for cross-examining P.W.1 and that the allegations in the affidavit are not only vague, but are also invented and thus, supported the order impugned.

7. Having regard to the facts and submissions and as the trial in the Election O.P. is in progress and as the reasons assigned, namely the ill-health of the sister and the Advocate's inability to appear before the Tribunal and cross-examine the witness, are sufficient and valid grounds in the considered view of this Court, this Court is satisfied that the request in the revision petition merits consideration and that the order impugned brooks interference.

8. In the result, the Civil Revision Petition is allowed and the order, dated 21.08.2017, of the learned Senior Civil Judge, at Huzurnagar, passed in I.A.No.133 of 2015 in E.O.P.No.09 of 2014, is set aside and, accordingly, the petition is allowed. However, considering the nature of the O.P., the petitioner is directed to co-operate with the Tribunal for expeditious disposal of the O.P. and cross-examine P.W.1 pursuant to this order without seeking further time. It is made clear that the Election Tribunal, on receipt of a copy of this order, shall fix a date for appearance of P.W.1 within one (01) week thereafter and that on that day, the 1st respondent in the Election O.P. shall cross-examine the said witness without fail without seeking further time. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

M.SEETHARAMA MURTI, J

Date: 6th April, 2018

Note: Issue C.C. by 10.04.2018.

(B/o.)
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