

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CRP.No.2169 of 2015

ORDER:

This revision petition is filed questioning the order dated 01.05.2015 in IA.No.1608 of 2014 in OS.No.4 of 2011 by the Principal District Judge, Khammam.

The suit OS.No.4 of 2011 is filed for specific performance of an agreement. The matter was posted to trial. On 03.09.2014 as PW.1 did not appear for cross-examination, the suit was dismissed. Therefore, an application was filed on 27.09.2014 for setting aside the default order and restoring the same to file. Thereafter, the impugned order came to be passed in which costs of Rs.1 lakh were imposed payable to the District Legal Services Authority, Khammam. In addition, other conditions were also fixed for the further progress in the matter. Questioning the said order, the present civil revision petition is filed.

The essential ground on which the revision is filed and argued is imposition of costs of Rs.1 lakh.

This Court has heard Sri A.Suryanarayana, learned counsel for the petitioner and Sri Kowturu Pavan Kumar, learned counsel for the respondents.

Learned counsel for the petitioner points out that the costs imposed are very heavy. According to the learned counsel, the suit is filed for specific performance of the agreement of sale and substantial advance has been paid.

Counsel points out that the suit was filed in 2011 and in 2014 the trial has commenced. It is his contention that there is no inordinate delay and as such the question of imposing such heavy costs is not a just as a party cannot be penalized for his not fault.

In reply, learned counsel for the respondents relied upon the counter filed in the lower Court and draws the attention of this Court to various dates on which the petitioner/plaintiff was absent. Therefore, his contention that the costs were rightly imposed and that therefore, no grounds are made to interfere with the revision.

This Court, after hearing both the learned counsels, notices that the matter was posted to 04.08.2014 when the counsel sought time. Thereafter, the matter was adjourned to 22.08.2014, 28.08.2014 and 03.09.2014 and the petitioner was absent. It does not appear to be a case of inordinate delay and procrastination. In addition, after the order was passed on 03.09.2014, application bearing IA.No.1608 of 2014 was filed to set aside the order dated 27.09.2014. Therefore, it is clear that the petitioner is fairly vigilant and is not deliberately procrastinating or delaying the trial.

In these circumstances, this Court is of the opinion that imposition of costs of Rs.1 lakh is exorbitant. It is true that if the Court feels that the petitioner is deliberately stalling the Court proceedings or setting up false pleas, reasonable costs have been imposed. But in the case on hand, the conduct of

the party does not reveal that there is a deliberate procrastination of the trial.

It is further a fact that the petitioner was not available for cross-examination. But this absence does not in view of the Court justify levying of penalty of Rs. 1 lakh.

Justice should also be exercised with mercy. Therefore, this Court is of the opinion that imposition of costs of Rs.1 lakh payable to the District Legal Services Authority, Khammam is heavy. In the circumstances, imposition of Rs.10,000/- as costs would meet the ends of justice. The costs of Rs.10,000/- that are now awarded should be paid to the District Legal Services Authority, Khammam within a period of 10 days from the date of receipt of a copy of this order.

Learned counsel for the revision petitioner also states that he will co-operate in the trial and would not seek any adjournments. It is made clear that the request for adjournments should be dealt with more strictly in this case. This Court has taken a liberal view of the matter but to ensure that the liberty granted by this Court is not abused in any manner, the lower Court should deal with all requests for adjournments strictly, but within the parameters of the law.

The revision petition is allowed setting aside the imposition of costs of Rs.1 lakh only. The Court is at liberty to fix further schedule for the cross-examination of PW.1 and also examination of further witnesses. Lower Court is also

directed to dispose of the matter on priority without in any way being influenced by what is stated in this order. No order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

D.V.S.S.SOMAYAJULU, J

Date: 20.11.2018
KLP

