

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.1285 of 2018

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioners/defendants, challenging the order, dated 28.11.2017, passed in I.A.No.334 of 2017 in I.A.No.141 of 2011 in O.S.No.17 of 2007, by the Junior Civil Judge, Cheepurupalli, Vizianagaram District, whereby, the petition filed by the petitioners/defendants under Section 151 of the Code of Civil Procedure, 1908, requesting to re-open I.A.No.141 of 2011 for execution of commission warrant as well as for a direction to the Advocate Commissioner to execute the commission warrant as early as possible, was dismissed.

2. Heard the learned counsel for the petitioners/defendants, the learned counsel for the respondent/plaintiff and perused the record.

3. The learned counsel for petitioners/defendants would contend that the trial Court appointed Advocate Commissioner to localise the plaint schedule property and to note down the physical features of the same in the year 2011. The said Advocate Commissioner returned the Warrant unexecuted owing to his personal work. Thereafter, another Advocate Commissioner was appointed in the year 2012. He also returned the warrant unexecuted due to non-availability of the parties. Third Advocate Commissioner was appointed in the year 2013. He took sufficient time and did not execute the Warrant. The

petitioners/defendants are eking out their livelihood by doing their caste profession. They are illiterates. Localisation of the plaint schedule property is very much essential for effective adjudication of the *lis* between the parties and ultimately prayed to allow the Revision by setting aside the order under challenge.

4. On the other hand, the learned counsel for the respondent/plaintiff opposed the Revision contending that the application for re-opening the I.A. for execution of warrant by the Advocate Commissioner was filed at a belated stage.

5. As seen from the material placed on record, In I.A.No.141 of 2011, the trial Court appointed Advocate Commissioner in 2011 to localise the plaint schedule property, situated in Survey No.54 in Gram Kantam and to note down the physical features of the same. The said Advocate Commissioner returned the Warrant unexecuted owing to his personal work. Thereafter, another Advocate Commissioner was appointed in the year 2012. He also returned the warrant unexecuted due to non-availability of the parties. Third Advocate Commissioner was appointed in the year 2013. He took sufficient time and did not execute the warrant. The trial Court, having given ample opportunity to the petitioners/defendants to get the warrant executed, closed the application on 26.10.2017 observing that both the parties have no interest in getting the warrant executed. Admittedly, evidence of both the parties was closed and the suit is coming up for arguments before the Court below. The suit is of the year 2007. It is for the petitioners/defendants to pursue the

remedies available to them with due diligence and care. When the trial Court appointed an Advocate Commissioner in 2011, the petitioners/defendants would have acted with due diligence and would have got the Warrant executed. Having kept quiet for two long years, the petitioners/defendants have filed the subject application before the Court below at a belated stage. The Court cannot keep the proceedings pending for an indefinite period. The parties have to rely on their oral and documentary evidence to substantiate their claim/defence. There is no infinity in the impugned order. The submissions made on behalf of the petitioners/defendants do not merit consideration. The Civil Revision Petition is devoid of merit and is liable to be dismissed.

6. In the result, the Civil Revision Petition is dismissed.

Miscellaneous Petitions pending, if any, shall stand closed.

No order as to costs.

25th June, 2018
Bvv

Dr. SHAMEEM AKTHER, J