

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

CIVIL REVISION PETITION No.413 of 2014

ORDER:

This civil revision petition is filed questioning the order, dated 20.01.2014, passed in I.A.No.246 of 2013 in A.S.No.6 of 2012, by the Judge, Family Court-cum-IV Additional District & Sessions Judge, Adilabad.

The application I.A.No.246 of 2013 is filed under Order 41 Rule-27 CPC to produce the “day books” pertaining to the sale of the items, which are the subject matter of the dispute before the court below. The lower court, after hearing both the learned counsel, dismissed the said application. Questioning the same, the present civil revision petition is filed.

This court has heard the learned counsel for the petitioner and the learned counsel for the respondent.

The learned counsel for the petitioner submits that as per the settled law on the subject, an application filed under Order 41 Rule 27 CPC should be considered along with appeal. The application cannot be independently considered. If, at the time of hearing of the appeal, the court is of the opinion that the additional evidence is necessary, the application can be allowed. If the court, at the time of final hearing of the appeal, comes to the conclusion that the documents are not necessary for disposal of the appeal, it can dismiss the application. However, the fact remains that the appeal and the application should be heard together. In the case on hand, the lower court proceeded to dispose of the application independently.

The learned counsel for the respondent tried to support the impugned order that is passed by the lower court.

Sri P.V.Narayana Rao cited the judgment of the Hon'ble Supreme Court in *M/s Eastern Equipment & Sales Ltd. Vs. ING. Yash Kumar Khanna*¹ in support thereof. The Hon'ble Supreme Court in the above referred judgment clearly held that the application filed under Order 41 Rule 27 CPC cannot be independently decided and it should be decided along with the appeal.

In view of the clear position of law, as laid down by the Hon'ble Supreme Court, in the case, referred to above, the impugned order, dated 20.01.2014, passed in I.A.No.246 of 2013 in A.S.No.6 of 2012, is set aside. It is represented that the appeal is still pending for hearing before the lower court. Therefore, the Judge, Family Court-cum-IV Additional District & Sessions Judge, Adilabad, before whom A.S.No.6 of 2012 is pending, is directed to hear I.A.No.246 of 2013 on its own merit and pass orders at the time of final hearing of the appeal. The lower court is directed to dispose of the I.A.No.246 of 2013 without in any way being influenced by what is mentioned in this order.

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

Pending miscellaneous applications, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

Date: 11.12.2018
Dsr

¹ AIR 2008 SC 2360