

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

Civil Revision Petition No.1961 of 2018

ORDER:

Heard the learned counsel for petitioner-plaintiff, who maintained the present C.R.P, stated another unnumbered C.R.P. in USR No.16511 of 2018 is pending, which is a petition for reopening.

2. The present C.R.P. is to examine on the plaintiff's side the husband of defendant as a witness filed in I.A.No.83 of 2018 in O.S.No.33 of 2009, which is a suit for specific performance on the file of the Principal Junior Civil Judge, Kovur, impugning the said dismissal order dated 19.03.2018.

3. Notice was served on the respondent and acknowledgment received failed to attend, taken as heard the respondent therefrom.

4. In fact, I.A.No.83 of 2018 is filed under Order XVI Rule 2 C.P.C. The reopening application is formal when the matter is not closed by reserving for arguments. The Registry reported that said unnumbered C.R.P. is returned on 04.05.2018 and the same is not resubmitted till date.

5. Coming to the present C.R.P., since Order XVI Rule 2 CPC is mentioned which speaks expenses of witnesses to be paid into Court on applying for summons, it is not even mentioned in the affidavit petition whether to be examined on behalf of the plaintiff or as the Court witness. So far as the Court witness is

concerned, the concerned provision is Order XVI Rule 14 CPC, if at all read with Section 165 of the Indian Evidence Act. There must be a specific prayer for that. Even if it is the Court witness, the Court has to exercise the discretion on such saying of the examination of third-party witness is necessary. The proposed witness was not a party to the proceedings being the third-party thereby. Once such is the case, it has to be made out for the Court to examine as the Court witness with right of cross-examination to both sides as to what is the necessity. Once such is not made out, there is nothing to interfere with the dismissal order of the Court below, but for giving liberty to invoke that provision and file any such petition afresh within one (1) week from the date of receipt of a copy of this order.

Accordingly, this Civil Revision Petition is disposed of. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

Dr. B.SIVA SANKARA RAO, J

20.07.2018
MVA