

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.2235 of 2018

ORDER:

This civil revision petition is filed by the second defendant, under Article 227 of the Constitution of India, assailing the order dated 29.1.2018 passed in I.A. No.93 of 2018 in O.S.No.189 of 2011 on the file of the Principal District Court, Guntur.

2. Heard the learned counsel for the petitioner and learned counsel for the first respondent.

3. In spite of service of notice, second respondent did not choose to appear; hence, this Court is inclined to pass the order on merits.

4. A perusal of the record reveals that first respondent filed O.S.No.189 of 2011 on the file of the Principal District Court, Guntur, against respondent Nos.1 and 2, who are defendant Nos.1 and 2 respectively, for specific performance of agreement of sale dated 30.4.2010. After completion of plaintiff's side evidence, the trial Court posted the matter for defendants' side evidence. The first defendant examined himself as D.W.1. For one reason or the other, the petitioner did not cross-examine D.W.1 on the day fixed by the trial Court. The petitioner was set *ex parte* on 13.12.2017. The petitioner filed I.A.No.93 of 2018 under Order IX Rule 7 of CPC to set aside the *ex parte* order dated 13.12.2017 and permit her to cross-examine D.W.1. The first respondent filed counter opposing the petition. The trial Court, after considering the material available on record, dismissed the petition. Hence, the revision.

5. For one reason or the other, the petitioner could not cross-examine D.W.1 on the day fixed by the trial Court. The very purpose of cross-examination of a witness is to elicit the truth thereby to substantiate the stand taken by the party on whose behalf the witness is cross-examined. If no opportunity is given to the petitioner to cross-examine D.W.1, it may not be possible for him to substantiate her stand. On the other hand, even if an opportunity is given to the petitioner, no prejudice will be caused to the respondents. The trial Court, without considering the prejudice likely to be caused to the petitioner, dismissed the petition.

6. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that it is a fit case to allow the petition.

7. In the result, the civil revision petition is allowed, setting aside the order dated 29.1.2018 passed in I.A. No.93 of 2018. Consequently, I.A.No.93 of 2018 in O.S.No.189 of 2011 on the file of the Principal District Court, Guntur is allowed, setting aside the *ex parte* order dated 13.12.2017 and permitting the petitioner to cross-examine D.W.1. Miscellaneous petitions, if any pending in this revision shall stand closed.

T.SUNIL CHOWDARY, J

Date: 13.12.2018
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