

HON'BLE SRI JUSTICE S.V.BHATT

CIVIL REVISION PETITION No.2642 of 2018

ORDER:

Heard Mr.Venkateshwar Varanasi for revision petitioner and Mr.V.Ravi Kiran Rao for respondent.

The revision petitioner filed I.A.No.587 of 2017 to appoint an Advocate to cross-examine the revision petitioner. The trial Court vide order dated 21.06.2017 allowed the application resulting in the respondent filing C.R.P.No.3850 of 2017. On 15.12.2017, the said Civil Revision Petition was allowed, order appointing Advocate Commissioner was set aside, and I.A. was remitted to trial Court for consideration and disposal in accordance with law.

One of the reasons weighing with the Court to allow C.R.P.No.3850 of 2017 was that the order of the learned trial Judge was suffering from too much of brevity. On remand, the order impugned in the Civil Revision Petition was passed by the trial court. Before excerpting the reasons weighing with the trial Court for refusing to exercise discretion for appointing Advocate Commissioner, this Court prefers to advert to the contentions of Mr.Venkateshwar Varanasi namely that the order impugned in the Civil Revision Petition is substantially an ex-parte order, thereby the revision petitioner did not have opportunity to put forth her case much less draw the attention of the Court to the

documents on which the revision petitioner seeks appointment of an Advocate Commissioner for cross-examination. The contention raised is substantially answered by the trial Court by recording following observations :-

“Under Order 18 Rule 4(2) C.P.C. recording of cross-examination and re-examination is by Court or by the Commissioner appointed by it. Therefore, recording of evidence on commission is provided under law. But, however, when the other party is not accepting for recording of evidence on commission, a party cannot insist recording of evidence on commission without sufficient reasons. Even as per the affidavit of the petitioner/defendant she went to Bangkok for more than 40 days and attended several meetings on religious tour. Therefore, her contention that she is old aged woman and is not in a position to move without support cannot be accepted without any convincing material on record.

When the petitioner/defendant is visiting foreign country for more than 40 days there is no any good ground for her alleged inability to attend to the Court to face cross-examination. In view of the rival contentions of the parties, as the petitioner/defendant denied the readiness of the respondent/ plaintiff and she cancelled the suit agreement and entered into sale transaction with another, the Court is of the considered opinion that the petitioner/defendant is not entitled for appointment of advocate commissioner, more particularly, in view of absence of convincing material in support of the contentions of petitioner/defendant for her alleged inability to attend to Court at Jagtial from Hyderabad where she is residing when she admittedly went to foreign tour i.e., religious tour for more than 40 days. The point is answered accordingly.”

The suit is one for specific performance of agreement of sale. The revision petitioner cannot insist upon, as a matter of

fact for cross-examination by the Advocate Commissioner instead of cross-examination in the Court.

It is brought to the notice of the Court that the physical pain or disability of the revision petitioner may not permit the revision petitioner to wait in the Court. This Court would not have adverted to this contention, but the same is adverted to for two reasons, firstly if such inconvenience is brought to the notice of Presiding Officer necessary accommodation is always made and secondly, the revision petitioner can take a convenient date for presenting herself for cross-examination.

With the above observations, the Civil Revision Petition is dismissed. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

Date: 27.04.2018
Prv

S. V. BHATT, J