

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

C.R.P.NOs.2739 AND 2763 OF 2018

COMMON ORDER:

These Civil Revision Petitions arise out of common order, dated 10.04.2018 passed in I.A.No.149 of 2018 in O.S.No.555 of 2012 and another I.A.No.150 of 2018 in O.S.No.555 of 2012.

2. The petitioner, who is the plaintiff filed the suit for specific performance of agreement of sale, dated 16.07.2012. After completion of trial, the plaintiff has filed I.A.No.149 of 2018 to re-open the suit and I.A.No.150 of 2018 to re-call P.W.2 for the purpose of further evidence to mark the suit document.

3. The trial Court in para 7 of its order stated that plaintiff has filed the suit basing on the agreement of sale, dated 16.07.2012 and the same was not marked in the suit during trial for more than one year. Finally, the plaintiff came up with the present petition with a negligent attitude. Therefore, to avoid inconvenience to the defendant, the trial Court has dismissed the two applications.

4. Heard the arguments of the learned counsel for the petitioner. Though notice is served on the respondent and proof of service is filed, none appeared on behalf of the respondent.

5. Learned counsel for the petitioner submits that the document could not be sent for impounding till the trial is completed. Since, the plaintiff is relying on the said document, she has to impound the document, otherwise she cannot pursue the suit as the suit is filed for specific

performance of agreement of sale, which is the suit document.

6. At the outset, the petitions filed by the petitioner before the trial Court to re-open the suit and re-call P.W.2 for the purpose of marking the suit document, were dismissed. Therefore, the petitioner is before this Court. The trial Court dismissed the two applications on the ground that the petitioner was not vigilant in prosecuting the case by getting the suit document impounded and dragged on the matter for one year.

7. Learned counsel for the petitioner submits that due to over sight, the document could not be marked before the trial Court. Thereafter, they sent the document for impounding. When they intended to mark the document, the trial Court did not permit the petitioner to mark the document. Admittedly, the entire case of the petitioner is based on the agreement of sale. No doubt, the petitioner could not get the document impounded earlier. The mere fact that the entire trial is completed and the suit is coming up for arguments, may not be a ground for rejecting the claim of the petitioner for marking the agreement of sale, which is the suit document.

8. In the facts and circumstances of the case, the order passed by the trial Court is set aside. However, the petitioner is directed to pay costs of Rs.2,000/- to the respondent for the inconvenience caused to him. The trial Court is directed to receive the document in evidence and get it marked in accordance with law within a period of two weeks from the date of receipt of a copy of this order.

9. In the result, the Civil Revision Petitions are allowed. No order as to costs. Miscellaneous petitions, if any pending in these revisions shall stand closed.

GUDISEVA SHYAM PRASAD, J

DATED: 03-08-2018

Hsd

