

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.4293 of 2011

ORDER:

The civil revision petition is filed under Article 227 of the Constitution of India, challenging the order dated 09.06.2011 passed in I.A.No.428 of 2010 in O.S.No.16 of 2009 by the Junior Civil Judge, Armoor, Nizamabad District whereby, the petition filed under Section 151 of Code of Civil Procedure (for short "C.P.C.") to reopen the evidence of plaintiff and set aside the order dated 02.12.2010, was dismissed.

The petitioner is the plaintiff in the main suit and filed the present petition under Section 151 of C.P.C. alleging that the suit was posted to 02.12.2010 for further evidence of the plaintiff, on that day, the witness, whom he proposed to examine was suffering from some ailment and admitted in the hospital at Nizamabad, as such he was unable to file affidavit under Order XVIII Rule 4 of C.P.C. (examination-in-chief) of the said witness, thereupon the Court closed the evidence of the petitioner and passed the impugned order dated 02.12.2010 and requested the Court to reopen the evidence of plaintiff.

The respondent filed counter denying material allegations and contended that the petitioner was cross-examined on 25.11.2010 and the suit was posted to 02.12.2010 for further evidence, but the petitioner did not produce any further evidence. Thereby, the Court having no other alternative closed the evidence of the plaintiff and posted the suit to 09.12.2010 and then to 21.12.2010 for the evidence of the defendant, the

respondent/defendant No.1 filed his affidavit as examination-in-chief under Order XVIII Rule 4 of C.P.C., at this stage, the petitioner filed the present petition to reopen the evidence of the petitioner/plaintiff.

Upon hearing argument of both the counsel, the Court below passed the impugned order that no details of the witness proposed to be examined and the ailment with which he was suffering were furnished and in the absence of details, the evidence of the plaintiff cannot be reopened and dismissed the petition.

Aggrieved by the same, the present revision is filed raising several contentions and in ground No.2 it is contended that the petitioner wanted to examine one Banja Rajaram, who fell sick and admitted in the hospital, though the suit was posted to 09.12.2010 for evidence of defendant, the petitioner filed the present petition immediately on 20.12.2010 itself to set aside the order dated 02.12.2010. Therefore, based on the ground that the proposed witness to be examined is only Banja Rajaram and requested to set aside the order passed by the trial Court and afford a reasonable opportunity to the petitioner.

During hearing, learned counsel for the petitioner would draw the attention of this Court to the ground No.2, wherein the name of the proposed witness was disclosed and when the petitioner disclosed the name of the witness to be examined, the Court may afford reasonable opportunity to adduce evidence and requested to set aside the order while exercising power under Article 227 of Constitution of India.

As seen from the order under challenge, the reason for dismissal of the petition is that the petitioner did not disclose the details of the proposed witness to be examined and the ailment with which he was suffering and the name of the hospital, where he was allegedly admitted. In the absence of any details, the petitioner cannot be permitted to adduce evidence since law does not permit the parties to file petition according to their convenience, as and when they wish to appear before the Court. The basic requirement to file petition is that there must be some factual foundation to claim such relief. In the present facts, the affidavit is totally silent about the details of the proposed witness and the ailment with which he was suffering and where he was admitted and in the affidavit it is stated that the petitioner proposed to examine some witness suffering from some ailment, who was admitted in the hospital at Nizamabad without disclosing any details.

If such petitions are allowed, the Courts will become privies to the delay and it amounts to encouraging the parties to file frivolous applications abusing process of the Court. When the petitioner himself is not certain as to whom he has to examine, the Court cannot set aside the order dated 02.12.2010 closing the evidence of the petitioner.

In “**Raj Kumar Bhatia v. Subhash Chander Bhatia**¹” the Full Bench of Apex Court held that in the exercise of its jurisdiction Under Article 227, the High Court does not act as an appellate court or tribunal and it is not open to it to review or

¹ (2018) 2 SCC 87

reassess the evidence upon which the inferior court or tribunal has passed an order.

In view of the law declared by the Apex Court in the judgment referred above, unless the Court comes to conclusion that the Court below transgressing jurisdictional limits and passed the impugned order, the Court cannot interfere with the order passed by the trial Court. Keeping in view the law declared by the Full Bench of Apex Court in the judgment referred supra, it is difficult for me to exercise power under Article 227 of Constitution of India. Hence, I find no illegality in the order passed by the Court below, warranting interference of this Court exercising power under Section 227 of Constitution of India. Consequently, the revision petition is liable to be dismissed.

In the result, the civil revision petition is dismissed. No costs.

The miscellaneous petitions pending in all the three revisions, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

23.02.2018
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