

THE HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.No.3442 of 2012

ORDER:

Heard Ms.Manjari S.Ganu for petitioners.

Defendants 3 and 4 in O.S.No.69 of 2008 are the revision petitioners. The 1st respondent filed the suit for damages against the revision petitioners herein and respondents 2 to 4.

The respondent filed I.A.No.126 of 2012 under Order 26 Rule 9 r/w Section 151 Code of Civil Procedure (CPC) to appoint Advocate Commissioner to examine Dr.Sunitha and Accounts Officer of Columbia Asia, Bangalore, Accounts Officer of Vivus, Bangalore, Dr.Vishnu and Accounts Officer of Bhagwan Mahaveer Jain Hospital, Dr.Ballal and Accounts Officer of Manipal Hospital, Bangalore and Managing Director Jain Institute of Vascular Sciences, Bangalore or his nominee.

The revision petitioners opposed the application. The learned trial Judge recorded the following findings:

“In view of the above discussions the petition is allowed Sri B.Srinivas, Advocate appointed as Advocate Commissioner to record the evidence of Dr.Sunitha and Accounts Officer of Columbia Asia, Bangalore, Accounts Officer of Vivus, Bangalore, Dr.Vishnu and Accounts Officer of Bhagwan Mahaveer Jain Hospital, Dr.Ballal and Accounts Officer of Manipal Hospital, Bangalore and Managing Director Jain Institute of Vascular Sciences, Bangalore or his nominee. The Advocate fee is fixed for Rs.10,000/-. The petitioner has to bear the TA, DA to the commissioner apart from the respondents advocates. The

commissioner is directed to submit his report by 9th day of July 2012.

In the result, the petition is allowed Sri B.Srinivas, Advocate appointed as Advocate Commissioner to record the evidence of Dr.Sunitha and Accounts Officer of Columbia Asia, Bangalore, Accounts Officer of Vivus, Bangalore, Dr.Vishnu and Accounts Officer of Bhagwan Mahaveer Jain Hospital, Dr.Ballal and Accounts Officer of Manipal Hospital, Bangalore and Managing Director Jain Institute of Vascular Sciences, Bangalore of his nominee. The Advocate fee is fixed for Rs.10,000/-. The petitioner has to bear the TA, DA to the commissioner apart from the respondents advocates. The commissioner is directed to submit his report by 9th day of July 2012.”

and allowed the I.A. Hence, the Civil Revision Petition.

Learned counsel appearing for revision petitioners contends that the first and foremost objection in the instant application is that the individuals who are sought to be examined on behalf of the respondent, if have filed the affidavit in lieu of chief examination, the trial Court ought to have examined whether the case on hand warrants appointment of Advocate Commissioner for cross-examination or not. In the absence of chief affidavit of the persons, who are going to be examined as witnesses on behalf of the 1st respondent, the Advocate Commissioner would be recording both chief examination and cross-examination. According to her, Order 18 Rule 14 mandates filing of affidavit in lieu of chief examination. She further contends that the examination of Accounts Officers on Commission is not required for, if the 1st respondent is relying on the transactions, which are

granted during and in the course of regular business transactions, the same can be evidenced by the 1st respondent. Thirdly, she contends that the difference between examination on Commission and also cross-examination in the Court is noted by the trial Court. She prays for setting aside the order under Revision by allowing the Civil Revision Petition.

In spite of Court granting sufficient opportunity, there is no representation for 1st respondent.

Be that as it may, the counsel appearing for the petitioners objectively draws the attention of the Court to each one of the documents/pleadings on which both the parties relied on.

The revision petitioners challenge the order of appointment of Advocate Commissioner. The trial Court which has seized of the issues and also the prayer of 1st respondent in O.S.No.69 of 2008 has exercised its discretion to facilitate 1st respondent to adduce the evidence as the 1st respondent thinks is relevant for discharging the suit claim. Though a serious attempt is made by the counsel for petitioners that the exercise of discretion in the case on hand is unwarranted and also reflects non-application of mind, this Court is of the view that as against the three objections raised by the revision petitioners, the first and foremost objection appears to be tenable in law and is based on the requirement of Rule 4 of Order 18 of CPC. I am not persuaded to set aside the order in its entirety and modified the order as follows:

The 1st respondent is given liberty to press for the execution of Advocate Commissioner's warrant after filing the chief affidavits of witnesses, whom he wishes to examine in the suit.

The suit is of the year 2008. The trial Court considers disposing of suit as expeditiously as possible.

Civil Revision Petition is disposed of as indicated above. No order as to costs.

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

Dt: 20.09.2018
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S. V. BHATT, J



