

HON'BLE SRI JUSTICE S.V.BHATT

Civil Revision Petition No. 2129 of 2011

Order:

Heard Mr. V.S.R. Anjaneyulu for the revision petitioner and Mr. Dasari S.V.V.S.V. Prasad for the respondent.

Appellant in A.S. No. 256 of 2007 is the revision petitioner. I.A. No. 222 of 2010 is filed under Section 45 of Evidence Act to send Ex.B3 dated 7.6.2001 for expert's opinion. The said application is disposed of by the Court below through the order impugned in the Civil Revision Petition.

Mr. V.S.R. Anjaneyulu, learned counsel for the revision petitioner contends that the appellate Court mis-directed itself while disposing of I.A. No.222 of 2010 for the appellate Court, if desired to treat I.A. No. 222 of 2010, as an application made under Order 41 Rule 27 C.P.C., the appellate Court would have taken up I.A. No. 222 of 2010 along with the appeal for hearing. Though the application is treated as one filed under Order 41 Rule 27 C.P.C., by verifying the requirements of Section 45 of Evidence Act, the application is rejected. Therefore, he prays for setting aside the order under revision.

Mr. Dasari S.V.V.S.V. Prasad, learned counsel for the respondent reads the order impugned in the Civil Revision Petition and submits that firstly, this application is without merit and secondly, without availing such remedy in OS. No. 138 of 2004, now the application is filed to fill up the gaps in evidence, which resulted in the findings recorded by the trial Court.

After perusing the record and taking note of rival contentions, this Court *prima facie* is of the view that the conclusion recorded by the Court below in not entertaining the present application is tenable though this Court may not agree with the entire reasoning of the learned appellate Judge. Be that as it may, the evidence is already on record and the application, if allowed, for sending Ex.B3 for expert's opinion, as rightly contended by Mr. Dasari S.V.V.S.V. Prasad, learned counsel for the respondent, the same would amount to filling up the gaps in evidence which was considered and findings were recorded by the trial Court.

The Civil Revision Petition fails and it is dismissed.

The appellate Court is directed to dispose of the appeal, A.S. No. 256 of 2007, within a period of two months from the date of receipt of a copy of this order.

Consequently, pending miscellaneous applications shall also stand closed. No costs.

S.V.BHATT, J

Date: 4th October, 2018

Pnb