

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.4457 OF 2018

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed challenging the order dated 04.07.2018 in I.A.No.576 of 2017 in O.S.No.11 of 2012 passed by the Junior Civil Judge, Kollapur, dismissing the application filed by the petitioner to reopen the evidence of the defendant on various grounds.

The petitioner filed petition under Section 151 C.P.C. to reopen the evidence alleging that when the suit was posted to 12.07.2017 finally, for the evidence of defendants, due to ill-health, the defendant did not appear before the Court to depose consequently, the Court closed the evidence and that the absence of the petitioner was not intentional or willful. Whereas, respondent disputed the same contending that no material is produced in support of his ill-health and prayed to dismiss the petition. The Court below after hearing both counsel, dismissed the petition that the ground raised in petition is not substantiated by any evidence.

It is the case where the parties are contesting the suit for perpetual injunction raising serious contentions and on account of ill-health, the petitioner could not appear before the Court. However, the ground raised in the petition is not supported by any medical evidence, it is appropriate to afford an opportunity to the defendant to adduce evidence to pronounce final verdict on merits. Therefore, with a view to afford reasonable opportunity, the civil revision petition is liable to be allowed.

Accordingly, the civil revision petition is allowed on payment of costs of Rs.5,000/- (Rupees five thousand) to the respondent in the revision petition within a week and the order dated 04.07.2018 passed in I.A.No.576 of 2017 in O.S.No.11 of 2012 by the Junior Civil Judge,

Kollapur is set aside, I.A.No. 576 of 2017 is allowed. On reopening the evidence, the defendant is directed to adduce evidence on day to day basis and that the Court below is directed to dispose of the suit in accordance with law within two months thereafter. As directed by this Court, cost of Rs.5000/- imposed is paid and that the same is acknowledged by the counsel for respondent. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending shall stand dismissed.

M. SATYANARAYANA MURTHY, J

30.11.2018

Note: issue c.c. by 03.12.2018

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