

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.355 OF 2017

ORDER:

The present Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner - respondent No.1 questioning the order, dated 19.12.2016, in I.A. No.578 of 2014 in A.T.C. No.11 of 2012, passed by the learned Special Officer - cum - Principal Junior Civil Judge, Amalapuram, whereby the petition filed under Order XVIII, Rule 3A read with Section 151 of the Code of Civil Procedure, 1908 (for short 'Code'), was allowed permitting the witness to be examined before examination of the petitioner in the tenancy case on the ground that the petitioner was suffering from ill-health, unable to appear before the Court to be examined as a witness, therefore, she sought permission of the Court to examine Sri G.S.R. Murthy, who is her son-in-law and GPA Holder to give evidence on her behalf and examine herself after examining the said GPA Holder.

2. The petition was opposed by the respondents.

3. Upon hearing argument of both sides, the trial Court passed the order which is impugned in the present revision, allowing the petition permitting Sri G.S.R. Murthy to be examined as a witness before examination of the petitioner therein viz., Batchu Jayalakshmi as a witness in A.T.C. No.11 of 2012.

4. The aforesaid order now challenged by respondent No.1 in ATC before this Court on various grounds, mainly on the ground that

the order is *ex facie* illegal and that respondent No.1 herein cannot be permitted to be examined after examination of her GPA Holder, who is not a party to the proceedings and he is only proposed to be examined as a witness on behalf of respondent No.1 herein. But, the trial Court did not consider the scope of Order XVIII, Rule 3A of the Code and committed, and thereby requested to set aside the order passed by the trial Court.

5. During hearing, learned counsel for the petitioner, Sri T.V.S. Prabhakar Rao, reiterated the grounds urged in the petition, whereas, Sri P. Rajesh Babu, learned counsel appearing for respondent No.1 strongly opposed the petition and requested to dismiss the revision affirming the order under challenge.

6. As seen from the material on record, the petitioner in ATC - Jayalakshmi filed a petition for eviction of respondents under Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (for short 'Act, 1956'), and when the petition ready for inquiry, the petitioner in ATC case being old aged, proposed to be examined her son-in-law being her GPA holder as a witness before her examination on the ground that she is not maintaining good health. It is not her case that she is unable to give evidence, but unable to attend the Court, and when she is able to give evidence, but inability to appear before the Court in such case, she can ask for appointment of advocate commissioner to record her cross-examination as she is entitled to file an affidavit under Order XVIII, Rule 4 of the Code in lieu of examination in-chief, and learned

counsel for the petitioner herein, Sri T.V.S. Prabhakar Rao reported no objection to appoint an advocate commissioner for the purpose of recording examination of Batchu Jayalakshmi before examining any other witness at her residence.

7. Therefore, in view of no objection reported by the learned counsel for the petitioner herein, instead of obtaining permission under Order XVIII, Rule 3A of the Code to examine Sri G.S.R. Murthy, who is son-in-law and GPA Holder of the petitioner in ATC case, it is appropriate to examine herself as a witness by appointing as an Advocate Commissioner to record her cross-examination at her residence given in the cause title to the petition as H.No.19-4-9, Solasavari Street, Palkol, West Godavari District. Accordingly, the order under challenge passed by the trial Court in I.A. No.578 of 2014 in ATC No.11 of 2012 is hereby set aside.

8. With the above direction, the Civil Revision Petition is disposed of. No order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in the present revision, stand closed.

M. SATYANARAYANA MURTHY, J

October 30, 2018
Mgr