

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.5053 of 2018

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/1st defendant in the Original Suit, challenging the order, dated 11.07.2018, passed in I.A.No.508 of 2018 in O.S.No.798 of 2009, by the Principal Junior Civil Judge, Ananthapuramu, whereby, the petition filed by the petitioner/1st defendant under Section 151 C.P.C. to reopen the suit for the purpose of adduction of his evidence as D.W.1, was dismissed.

2. Heard the learned counsel for both sides and perused the record.

3. The demeanour of the petitioner/1st defendant on three earlier occasions in dillydallying with the case and not cooperating with the proceedings has been recorded by the Court below in the impugned order. As a matter of fact, though ample opportunity was afforded to the petitioner/1st defendant to adduce evidence, since the petitioner/1st defendant did not come forward to adduce evidence till 04.04.2018, the Court below closed the evidence on his side and posted the case for arguments. The contention of the petitioner/1st defendant was that since the advocates were on strike and the Court did not function on 04.04.2018, he could not adduce evidence on that day. Admittedly, the affidavit in lieu of examination in chief of the petitioner/1st defendant was already filed before the Court

below on 03.11.2016 and since then, the petitioner took several adjournments and did not come forward to offer himself for cross-examination and consequently, the Court below closed his further evidence and posted the matter for arguments.

4. However, there is no denial of the fact that on 04.04.2018, the advocates went on strike and as such, the Court below did not function on that day. While considering the application of this nature, what is relevant is whether the reason for the petitioner/s absence on the given date is deliberate or *bona fide* and whether the petitioner/s had a justifiable reason for not being able to proceed with the case on the said day and not the earlier conduct. In the subject Interlocutory Application, though the respondent had filed Court Affidavit, he did not deny the assertion of the petitioner/1st defendant that on 04.04.2018, the Court below did not function due to boycott of the advocates. Admittedly, the suit is for declaration of title and recovery of possession of the suit property, which is house site.

5. Under these circumstances, this court deems it appropriate to afford one more opportunity to the petitioner/1st defendant, subject to the following conditions:

- i. Since it is state the suit is posted for hearing on 10.09.2018, the petitioner/1st defendant shall be present before the Court below on the said date and offer himself for his cross examination.

ii. The petitioner/1st defendant shall pay costs of Rs.10,000/-(Rupees ten thousand only) to the respondent/plaintiff and file proof of payment by a memo before / on 10.09.2018.

6. Subject to fulfilment of the above conditions by the petitioner/1st defendant, the subject Interlocutory Application in I.A.No.508 of 2018 stands allowed and the Court below shall proceed with recording of the evidence. As the suit is of the year 2009, both the parties are directed to produce further evidence, if any, on their respective sides within a period of eight weeks from the date of receipt of a copy of this order, so as to enable the Court below to dispose of the suit on or before 01.12.2018. Needless to mention that if the petitioner/1st defendant fails to fulfil any of the above conditions, the impugned order shall stand confirmed and no further application of such nature shall be entertained by the Court below.

7. The Civil Revision Petition is disposed of accordingly. No costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

CHALLA KODANDA RAM, J

Date: 31.08.2018.

Note: Issue C.C. forthwith. Office to ensure copy dispatched forthwith as the matter is listed in lower Court on 10.09.2018.

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