

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2496 OF 2011

ORDER:

This civil revision petition is filed under Article 227 challenging the order in I.A.No.286 of 2011 in O.S.No. 378 of 2005 dated 13.06.2011 passed by the XI Additional Chief Judge, City Civil Court at Hyderabad, whereby the Court below allowed I.A.No.286 of 2011 as the petitioner was not willing to cross examine DW-1 before Commissioner and warrant was also not executed by the Commissioner for the last 8 months. Further the Commissioner also returned warrant and could not complete cross examination after redirection also. Hence the Court below directed the Commissioner to return the warrant, deposition and other documents if any.

Now, the petitioner has to be cross-examined in the Court itself in the presence of Presiding Officer of the Court. The difficulty expressed by the petitioner is that, the petitioner is suffering from spinal problem and he is confined to bed for the last many years and he is not in a position to climb the staircase to enter into the Court hall to give evidence. Therefore, the orders passed by the Court below is erroneous and prayed to set aside the order by appointing another Commissioner or redirecting the same Commissioner to record cross examination.

Undisputedly, the suit is of the year 2005 and order under challenge was passed in the year 2011, discharging the Commissioner from cross-examining the witness. The only difficulty expressed by the learned counsel for the petitioner is that, the witness is not in a position

to climb the staircase to appear before the Court. Accepting the same, the Trial Court appointed an advocate Commissioner. But, at this stage, when the witness was not examined for a long period of 8 months by the respondent herein, the Court discharged the Advocate commissioner rightly. But, the petitioner did not file any fresh application seeking a direction to the same Commissioner or for appointment of fresh Commissioner for the said purpose. In such case, the contention of the learned counsel for the petitioner to appoint another Commissioner or redirect the same Commissioner to execute the warrant cannot be accepted by this Court. At best, this Court can record the cross examination of the witness DW-1 as 'NIL', if the witness was not examined on production. Even today, the difficulty expressed by the learned counsel for the petitioner is that the petitioner is not in a position to climb the staircase to appear before the court for tendering himself for cross-examination. If the suit is pending before the Senior Civil Judge, City Civil Court Hyderabad, there are two lifts provided in the complex, i.e. one for the officers and another for the litigant public. In such case, the petitioner need not climb the staircase to appear before the Court tendering himself for cross examination. If, for any reason, the suit is pending before the Court which is not located within the main building of the City Civil Court Hyderabad, the petitioner may apply for withdrawal and transfer of the suit pending before the Chief Judge City Civil Court at Hyderabad and on such application the Chief Judge City Civil Court Hyderabad is may consider the request of the petitioner, if any, or otherwise, the Chief Judge may exercise power under Section 24 CPC sumoto to withdraw pending suit on the file of XI Additional Chief

Judge, City Civil Court at Hyderabad and transfer to another Court which is located in the ground floor of the main building or adjacent to the Court located, enabling the petitioner to appear before the Court for tendering himself for cross examination.

With the above direction, the present civil revision petition is disposed of.

Consequently, miscellaneous applications pending if any, shall stand closed.

Date:26.02.2018

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JUSTICE M. SATYANARAYANA MURTHY

