

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.6382 of 2017

ORDER:

1 This petition is filed under Article 227 of the Constitution of India, challenging the order dated 23.10.2017 passed in I.A.No.943 of 2017 in O.S.No.17 of 2007 on the file of the Court of the IV Additional District Judge, Vizianagaram.

2 Heard the learned counsel for the petitioner.

3 A perusal of the record reveals that the petitioner filed O.S.No.17 of 2007 on the file of the Court of the IV Additional District Judge, Vizianagaram against the respondents for specific performance of agreement of sale. After completion of evidence on both sides, the petitioner filed I.A.No.943 of 2017 to recall P.W.2. The respondents filed counter opposing the petition, *inter alia* contending that the petition is not maintainable either on facts or in law. The trial court, after affording a reasonable opportunity to both parties, dismissed the petition. Hence the present Civil Revision Petition.

4 The point for consideration is whether there is any irregularity, illegality or impropriety in the impugned order?

5 It is needless to say that a party to the proceedings is entitled to file interlocutory applications requesting the court to permit him to examine the witnesses. The trial court dismissed the petition on the ground that the petitioner filed the petition at a belated stage in order to protract the proceedings. The petitioner ought to have filed the petition before commencement of the examination of defendants' side witnesses. For the reasons best known to the petitioner, she filed the

petition after completion of defendants' side evidence. The possibility of filing of this type of application to fill up lacunae on the part of the petitioner cannot be ruled out completely.

6 Another interesting aspect in this case is, before the trial court, the advocate clerk filed the affidavit on behalf of the petitioner. This court is unable to understand how an advocate clerk is competent to file affidavit on behalf of the petitioners? Filing of the affidavit by the advocate clerk before the trial court itself indicates the care taken by the petitioner in prosecuting the case. When the affidavit filed by the advocate clerk itself is not maintainable, question of granting of the relief does not arise at all. Viewed from any angle, the petition filed by the petitioner is not sustainable. The trial court considered all these aspects in right perspective and dismissed the petition. I see no illegality, irregularity or impropriety in the impugned order, warranting interference of this court in exercise of jurisdiction under Article 227 of the Constitution of India and accordingly the Civil Revision Petition is liable to be dismissed.

7 In the result, the Civil Revision Petition is dismissed. No costs. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

Date: 12.12.2018
Kvsn

T. SUNIL CHOWDARY, J