

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION No. 7185 of 2018

ORDER:

This Civil Revision Petition is filed challenging the order dated 19.09.2018 passed in I.A.No.57 of 2017 in O.S.No.101 of 2015 by the Junior Civil Judge, Srungavarapukota, Vizianagaram District.

The petitioner/plaintiff filed O.S.No.101 of 2015 for recovery of money based upon a promissory note. The respondent/defendant filed his written statement. The petitioner filed his affidavit in lieu of examination-in-chief and the matter is coming up for the cross examination of P.W.1. As the petitioner fell sick and his memory is impaired, he filed I.A.No.57 of 2017 under Section 151 C.P.C. to permit his son-Prakash to give evidence on his behalf. Along with the said application, the petitioner filed the Medical Certificate dated 06.02.2017 and also CT Scan Report of Brain dated 06.02.2017. The said application was dismissed by the Court below by a very brief and cryptic order. Questioning the same, the present Civil Revision Petition is filed.

The petitioner has stated that his memory is impaired and he is taking treatment for the same from one Dr.J. Ramesh, M.D, Neuro Psychiatry; that the Court below did not actually consider the contents of the Medical Certificate, which clearly shows that the petitioner is suffering from mild to moderate memory impairment (Dementia) and that he also suffered a cerebrovascular accident (stroke) and that he is on regular treatment for both the conditions; that the proposed witness was present at the time of execution of the suit promissory note, as such, he has personal knowledge about the facts of the case and therefore, he is competent to depose about the facts of the case; and, that as per the

provisions of Order 18 Rule 3A of the CPC, the plaintiff can also be examined later with the permission of the Court.

The respondent did not appear despite service.

The Court notices that the Medical Certificate clearly shows that the petitioner is suffering from dementia and also had a stroke and that he is undergoing treatment for both the conditions. The CT Scan Report and the Medical Certificate are dated 06.02.2017 and the present application was filed on 13.02.2017. These were not considered by the Lower Court.

In the peculiar facts and circumstances of the case, this Court is of the view that the Court below ought to have permitted the son of the petitioner to give evidence as a witness as he states that he knows the facts of the case. Order 18 Rule 3A C.P.C will also come to the aid of the petitioner. In fact, the settled law is that the plaintiff can also be examined later with permission of the Court. In the circumstances, the impugned order is liable to be set aside.

The Civil Revision Petition is accordingly allowed setting aside the order dated 19.09.2018 passed in I.A.No.57 of 2017 in O.S.No.101 of 2015 by the Junior Civil Judge, Srungavarapukota.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

JUSTICE D.V.S.S.SOMAYAJULU

Date: 26.12.2018
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