

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.7333 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 17.11.2017 passed in I.A.No.872 of 2017 in O.S.No.355 of 2011 on the file of the Court of the Principal Senior Civil Judge, Chittoor.

2. Heard the learned counsel for both parties.

3. The point that arises for consideration is:

“Whether there is any illegality, irregularity or impropriety in the impugned order?”

4. A perusal of the record reveals that the first respondent filed O.S.No.355 of 2011 on the file of the Court of the Principal Senior Civil Judge, Chittoor, against the petitioner and second respondent for specific performance of agreement of sale dated 07.09.2009. After completion of evidence of PW.1, the suit was posted for further evidence. The petitioner filed I.A.No.872 of 2017, under Order XVIII Rule 17 C.P.C., to recall PW.1 for cross-examination of PW.1. The first respondent filed counter *inter alia* contending that the petition is not maintainable either on facts or in law; therefore, the petition is liable to be dismissed. The trial Court dismissed the petition. Hence, the revision.

5. A perusal of the record reveals that for one reason or other, the petitioner, who is the second defendant, did not cross-examine PW.1. The very purpose of cross-examination of the witness is to elicit the truth and thereby to substantiate the stand of the party,

who cross-examined the witness. If the petitioner is not permitted to cross-examine PW.1, it may not be possible for him to substantiate his stand taken in the written statement. Even if the petition is allowed, the same would not cause any prejudice to the rights of the first respondent. The trial Court, without taking into consideration the prejudice likely to be caused to the petitioner, dismissed the petition.

6. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that it is a fit case to set aside the impugned order.

7. In the result, the Civil Revision Petition is allowed setting aside the order dated 17.11.2017 passed in I.A.No.872 of 2017 in O.S.No.355 of 2011 on the file of the Court of the Principal Senior Civil Judge, Chittoor. Consequently, I.A.No.872 of 2017 is allowed permitting the petitioner to cross-examine PW.1. If the petitioner fails to cross-examine PW.1 on the day fixed, the trial Court is at liberty to proceed in accordance with law. There shall be no order as to costs.

8. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 21.12.2018
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