

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.7043 OF 2017

ORDER:

This civil revision petition is filed under Section 115 of Code of Civil Procedure (for short "C.P.C.") challenging the order dated 24.08.2017 passed in I.A.No.333 of 2017 in O.S.No.38 of 2017 by the Senior Civil Judge, Nizamabad, whereby the petition filed under Section 151 of C.P.C. was dismissed.

The petitioner filed an application under Section 151 of C.P.C. to direct the Bailiff to break open the lock of the premises bearing D.No.11-1-1735 and 1736 situated at Armour Road, Kanteshwar, Nizamabad to assess the damages caused by the respondent to the premises.

The petitioner filed suit for damages of Rs.8,52,000/- on the ground that the respondent being the tenant in occupation of the premises caused damage to a tune of Rs.8,52,000/-. In paragraph No.4 of the plaint, the damage caused to various items of the property was mentioned.

The petitioner also filed another application to appoint advocate-commissioner and on the request of the petitioner, Sri B.Kesava Rao, was appointed as Commissioner and he filed his interim report stating that the suit schedule property is under lock, therefore, requested to direct the Bailiff to break open the lock to assess the damages caused to the suit schedule property.

On bare perusal of the affidavit filed along with the petition, it is clear that an advocate was appointed as commissioner in

I.A.No.169 of 2017, who in turn filed interim report on 05.08.2017 stating that the suit schedule property is locked. In fact, the respondent/defendant has not delivered the keys of the premises till date to the petitioner, but the respondent contended that she already handed over the keys. Therefore, requested the Court to direct the Bailiff to break-open the locks.

The respondent disputed the same by filing counter raising several contentions.

However, the sole purpose of direction sought for in the petition is to enable the Commissioner appointed vide orders in I.A.No.169 of 2017 to assess the damage caused to the premises, but as the premises was locked he could not execute the warrant. In those circumstances, he filed the present petition I.A.No.333 of 2017 in O.S.No.38 of 2017.

The suit itself was filed for damages of Rs.8,52,000/- and advocate-commissioner was appointed to assess the damage caused to the premises. If for any reason, the advocate – Commissioner visits the premises and filed report, it amounts to granting pre-trial decree as held by the Apex Court in “**Haryana Waqf Board vs. Shanti Sarup and others**”¹. Therefore, advocate – commissioner cannot be appointed for assessment of damages even before commencement of trial or during trial and if for any reason, the Court concludes that, at the end of trial, damage is to be ascertained; the petitioner may apply for appointment of advocate-commissioner for assessment of damages. At this stage,

¹ (2008) 8 SCC 671

very appointment of Commissioner and seeking direction against bailiff to open the lock etc., cannot be granted since it amounts pre-trial decree. Therefore, the order passed by the Court below does not suffer from any legal infirmity warranting interference of this Court exercising power under Section 115 of C.P.C. Consequently, the revision is liable to be dismissed.

In the result, the civil revision petition is dismissed. No costs. However, the petitioner is at liberty to file appropriate application at appropriate stage.

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

22.10.2018
Ksp



JUSTICE M. SATYANARAYANA MURTHY