

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CIVIL REVISION PETITION No.6737 OF 2017

ORDER :

This revision is filed against the order dated 20.11.2017, passed in IA.No.792/2017 in OS.No.50/2010 by the VIII Additional District Judge, West Godavari at Eluru, wherein and whereby the application filed by the petitioner/plaintiff under Section 151 CPC to reopen the suit proceedings for appointment of Advocate Commissioner to note down the physical features about the thickness of the wood and measurement of said wood and to measure the thickness of the plastering, was dismissed.

Learned counsel for the petitioner submits that as per the instructions of the 1st defendant, the plaintiff carried out 20 MM plastering work of walls even beyond the terms of the agreement and the same was also admitted by the respondent No.3 in the written statement, as such to measure the said work done by the plaintiff, Advocate Commissioner could have been appointed. He also submits that as per the terms of the agreement the petitioner has to attend plastering work at 12 MM only, but as per the instructions of the 1st defendant, the plaintiff carried out 20 MM plastering work of walls even beyond the terms of the agreement, but the petitioner was paid amount for the work done at the rate of 12 MM.

On the other hand learned counsel appearing for the 1st respondent submits that the agreement vide Document No.10/2007-2008, entered into by the petitioner with the 1st

respondent dated 01.01.2008, provides only 12 MM thickness. He also submits that as per clause 8.3 of the agreement, the petitioner/plaintiff should have submitted a statement to the 1st respondent before the 15th day of each month, showing extra items that have been executed during the proceeding. But, no such statement is submitted by the petitioner to the 1st respondent. In the absence of such submission, the petitioner is not entitled to claim extra amount. He also submits that in the Measurement Book the thickness of the plastering work undertaken by the petitioner is entered as 12 MM only and petitioner has not disputed the same neither in the plaint nor in the evidence of petitioner, as such, the petitioner cannot introduce such plea at the stage of arguments.

In this case it is to be seen that the suit is of the year 2010 and admittedly the evidence of both sides is closed and the suit is coming for trial and the petitioner has not raised any objection while signing the Measurement Book and he has not taken such plea in the plaint or during the course of evidence. As observed by the Court below, the defendants 1 and 2 filed written statement on 18.11.2010 and defendant No.3 filed written statement on 04.10.2010 and the same was adopted by the 4th defendant on 18.11.2010; issues were framed on 13.06.2012 and the trial commenced on 20.07.2016 as the chief-affidavit of PW1 was filed on that day; and plaintiff side evidence was closed on 15.03.2017 and defendant's side evidence was closed on 03.10.2017 and posted for arguments on 10.10.2017. Only after evidence is

closed, the petitioner/plaintiff filed the present application for appointment of advocate commissioner. The pleas taken in the present affidavit neither raised in the plaint nor the same is disclosed during recording of evidence. In view of the same, I do not see any error in the order passed by the Court below.

Accordingly, the CRP is dismissed. No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the CRP, shall stand closed.

07.02.2018
t k



A.RAJASHEKER REDDY, J