

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.566 of 2019

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed aggrieved by the docket order, dated 20.12.2018, passed in I.A.No.1196 of 2018 in O.S.No.1352 of 2009 by the VIII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, wherein the petition filed under Order XVIII Rule 17 read with Section 151 of the Code of Civil Procedure, 1908, was dismissed.

2. Heard the learned counsel for the petitioner/plaintiff, learned counsel for the 2<sup>nd</sup> respondent and perused the record. In spite of service of notice on 1<sup>st</sup> respondent, there is no representation on his behalf.

3. The petitioner/plaintiff filed the subject suit for specific performance and declaration of sale deed, dated 31.01.2007, as null and void. As per the material placed on record, the subject suit is coming up for defendants evidence. The petitioner/plaintiff filed the chief-examination affidavit of P.W.2 on 16.08.2018 and the matter is posted for cross-examination of P.W.2. Despite passing several conditional orders by the Court below, P.W.2 could not appear for cross-examination on the ground that he is suffering from diabetes and his sugar levels are very high. Since PW.2 did not appear for cross-examination, the Court below eschewed the evidence of P.W.2 on 31.10.2018, closed the plaintiff's side evidence and posted the matter for

defendants' evidence. It is also borne by the record that the subject IA was filed after closure of the plaintiff's side evidence, without filing an application to reopen the evidence of the plaintiff.

4. Since the cross-examination of P.W.2 is necessary for determining the *lis* in the subject suit filed for specific performance, the impugned docket order, dated 20.12.2018 passed in I.A.No.1196 of 2018 in O.S.No.1352 of 2009 by the Court below is liable to be set aside.

5. Accordingly, the impugned docket order, 20.12.2018, passed in I.A.No.1196 of 2018 in O.S.No.1352 of 2009 by the VIII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, is set aside. Consequently, I.A.No.1196 of 2018 is restored to its file subject to revision petitioner paying costs of Rs.10,000/- (Rupees ten thousand only) to the respondent/defendant. The petitioner/plaintiff is given liberty to file an application to reopen the plaintiff's side evidence and proceed with the matter.

6. With the above directions, the Civil Revision Petition is ordered.

Miscellaneous petitions, if any, pending in this revision petition shall stand closed. There shall be no order as to costs.

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Dr. SHAMEEM AKTHER, J

14<sup>th</sup> November, 2019

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