

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
And
THE HONOURABLE SRI JUSTICE T.VINOD KUMAR

CIVIL MISCELLANEOUS APPEAL No.142 of 2019

JUDGMENT : (*Per Hon'ble Sri Justice M.S. Ramachandra Rao*)

This appeal is filed challenging the order dt.27-12-2018 in I.A.No.1906 of 2018 in O.S.No.42 of 2016 of the I Additional Chief Judge, City Civil Court, Secunderabad allowing an application under Order XXXVIII Rule 5 C.P.C. against the appellant herein.

2. Learned counsel for appellant contends that the appellant had in fact filed counter-affidavit in the above I.A. in the Court below on the date when arguments were heard by it on 28-11-2018, but the impugned order at para-3 records that no counter-affidavit has been filed by the appellant.

3. Learned counsel for respondents however refutes the said contention stating that at the time when the arguments were advanced by the counsel for the respondents, no counter-affidavit was on record and it appears to have been filed in the Section of the Court below, after the Court reserved the matter for orders.

4. Since there is an issue now as to whether the appellant had filed his counter-affidavit before the arguments were advanced by his counsel in the Court below and since the said fact is disputed now by the learned counsel for the respondents, we feel that it is appropriate to direct the appellant to approach the Court below by filing an

application for review of the order passed by the Court below by raising the said contention as well as any other contentions open to him.

5. Accordingly, the CMA is rejected granting liberty to the appellant to file Review Petition before the Court of I Additional Chief Judge, City Civil Court, Secunderabad to review the order dt.27-12-2018 in I.A.No.1906 of 2018 in O.S.No.42 of 2016, and it is made clear that the counsel for respondents shall not oppose the said Review application on the ground of delay. No costs.

6. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE T. VINOD KUMAR

Date: 09-09-2019

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