

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.885 of 2019

ORDER:-

This revision is filed challenging order dt.19.03.2019 in I.A.No.36 of 2019 in O.S.No.116 of 2011 of Senior Civil Judge at Sathupally, refusing to reopen the evidence and to recall PW.2 to mark certain documents as exhibits.

2. Counsel for the petitioner in the Court below had filed an affidavit stating that certain documents which have to be marked during the evidence of P.W.2 were not marked by mistake and opportunity be given to the petitioner to recall PW.2 and mark the said documents.

3. Counter was filed by the respondents opposing the said application and contending that no case is made out to recall P.W.2 to mark the documents. An objection was also raised that an Advocate cannot file an affidavit on behalf of the party in I.A.No.36 of 2019.

4. By order dt.19.03.2019, the Court below dismissed the said application accepting the technical objection of the Counsel for the respondent that affidavit in I.A.No.36 of 2019 was filed by the Advocate for the petitioner and not the petitioner. It also observed that there is no mention whether the failure to mark these documents during the deposition of P.W.2 was wilful or on account of oversight.

5. Assailing the same, this revision is filed.

6. Counsel for the petitioner contended that there is no bar in law for an Advocate of a party to file an affidavit in an application when it was the fault of the Advocate because of which the application has to be filed. It is pointed out that in the instant case it is the Advocate's mistake of not marking documents when PW.2 was in the witness box that resulted in the present situation.

7. Though Counsel for the respondent sought to contend that it is impermissible in law, I do not see why it is impermissible. When it was the Advocate's fault in not marking the documents, the Advocate having authority to represent the party, can file an application stating that it was his mistake. Otherwise, the party would suffer for the fault of the Advocate.

8. The view of the Court below that there is no explanation as to whether the failure to mark the documents was wilful or due to oversight is also not proper since the Advocate for the petitioner in the affidavit filed along with I.A.No.36 of 2019 has stated that it was the Advocate's mistake in not marking the documents when PW.2 was in the witness box. Therefore, the impugned order dt.19.03.2019 in I.A.No.36 of 2019 in O.S.No.116 of 2011 of the Senior Civil Judge at Sathupally, is set aside and the said I.A. is allowed.

9. The Civil Revision Petition is accordingly allowed. No costs.

Consequently, miscellaneous petitions if any pending in the Civil Revision Petition shall stand dismissed.

M.S.Ramachandra Rao, J

5th August, 2019
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