

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P.NO.1959 OF 2019

O R D E R

The plaintiff is Gunrock Enclave Co-operative Society Ltd., and it is represented by its President, and the defendants are the Army Welfare Co-operative Housing Society Ltd and another.

The plaintiff filed the suit in O.S.No.149 of 2009 on the file of XXVII Additional Chief Judge, City Civil Court, Secunderabad for recovery of possession.

The suit schedule property is situated within the jurisdiction of Secunderabad Cantonment Board (for short 'the Board').

During the cross-examination of P.W.1, there was a suggestion to him that Secunderabad Cantonment, is a proper and necessary party to the suit. Subsequently, the plaintiff filed I.A.No.1075 of 2018 in O.S.No.149 of 2009, seeking to implead the Board, as 3rd defendant to the suit.

By order and decree dated 26.11.2018, the trial court dismissed the I.A., and in the revision preferred by the plaintiff, this court in C.R.P.No.43 of 2019 dated 24.01.2019, while confirming the order of the trial court, gave liberty to the plaintiff to seek for summoning of appropriate records from the office of the proposed defendant.

In pursuance of the said order, the plaintiffs sought for summoning of Chief Executive Officer (CEO) of the Board, for examining him as a witness to depose in respect of revised sanctioned plan as well as survey report.

One Sri Ch.Uma Shankar, Assistant Engineer of the Board, was present before the court and produced only the sanctioned plan. As the other documents sought for by the plaintiff, were not produced, the trial court felt that presence of CEO is necessary to depose in this behalf, and accordingly vide the impugned docket order dated 03.07.2019, issued summons to him to appear in person as a witness to depose his evidence.

Aggrieved by the same, the CEO filed the present revision to dispense with his presence to give evidence.

Learned counsel for the petitioner submits that the Board, is not a party to the suit and the earlier summons issued to the Board was only for production of the record, and the same was produced, and hence as per Section 357 of the Cantonment Act, 2006, the appearance of the officer or any of the employee of the Board, can be dispensed with.

Learned counsel further submits that even as per Order XVI, Rule 6 of C.P.C., when the summons is only for production of documents and not for giving evidence, and such documents were produced, it shall be deemed that summons have been complied with, and the personal presence of such official to give evidence, may not be required.

Learned counsel submits that one Ch.Uma Shanker, Assistant Engineer of the Board was present and he produced the document, and instead of examining him, the court below has summoned the CEO. Therefore, the learned counsel seeks to set aside the impugned order.

On the other hand Sri K.Vasanth Rao, learned counsel appearing for the 1st respondent / plaintiff submits that the authorised officer of the Board may be permitted to give evidence in respect of the documents

sought for by the plaintiff, and that the plaintiff has no objection for the same.

As noted above, the plaintiffs sought for presence of CEO for examining him as a witness to depose in respect of revised sanctioned plan and survey report. But the authorised officer of the CEO, who was present before the court, produced only the sanctioned plan. It is to be noticed that the plaintiffs sought for presence of CEO not only for production of the record, but also to give evidence in that behalf. As only one document was produced, the trial court felt that presence of CEO is invariably required to explain the same. In view of these circumstances, I do not find any reason to interfere with the docket order passed by the trial court.

Since, one Ch.Uma Shankar, Assistant Engineer of the Board, who is authorised by CEO, has produced the document, and the learned counsel for the parties submit that he may be permitted to depose in respect of the documents sought for by the plaintiffs, the revision petition is disposed of modifying the impugned order to the effect that the said authorised officer, shall appear as a witness on behalf of the petitioner herein, and depose his evidence.

Interlocutory applications pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY,J

DATE:16—08—2019
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