

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

CIVIL REVISION PETITION No.2795 of 2019

ORDER :

This revision is filed aggrieved by order dated 26-08-2019 passed in I.A.No.588 of 2019 in O.S.No.795 of 2013 on the file VII Additional District Judge's Court, L.B.Nagar, Ranga Reddy District, wherein and whereby the application filed by petitioner under Section 65-B of Indian Evidence Act (for short "the Act") to receive/mark the photocopy of family settlement-cum-partition deed dated 16-06-1977 on her behalf was dismissed.

Heard learned counsel for the petitioner, who, submits that the Court below dismissed the application filed by the petitioner for receiving secondary evidence on the premise that wrong provision of law is mentioned in the application, but non-mentioning of correct provision of law is not a ground for dismissing the application.

On the other hand, learned counsel for the respondents submits that Section 65-B of the Act has no application, since the petitioner is only seeking to receive xerox copy of partition deed dated 16-06-1977 and wanted to mark the same. As such, the Court below has rightly rejected the application of the petitioner and no interference is called for.

Section 65-B of the Act deals with the admissibility of electronic records and the petitioner filed application for receiving the photocopy of family settlement-cum-partition

deed, which is not an electronic record. A reading of the impugned order and affidavit filed in support of the application goes to show that the petitioner has filed application for receiving the photocopy of family settlement-cum-partition deed dated 16.06.1977 as secondary evidence. But even at the time of arguments also, learned counsel appearing for the petitioner in the Court below has not brought to the notice of the Court, the correct provision of law under which he is seeking relief. As such, it cannot be said that the order passed by the Court below is illegal and erroneous. But however, the scope of Sections 63 to 65 of the Indian Evidence Act provides for receiving of secondary evidence subject to compliance of conditions therein. It is well settled that non-mentioning or wrong mentioning of provision of law would not be of any relevance, if the Court had the requisite jurisdiction to pass an order. In view of the same, the Court below ought to have considered the application of the petitioner in terms of Sections 63 to 65 of the Act.

It is to be seen that due to filing of revision by the petitioner, the respondents were dragged to the High Court for no fault of them. Hence, the revision is liable to be allowed with costs.

In view of the same, the revision is allowed subject to payment of costs of Rs.10,000/- (Rupees ten thousand only) to the respondents. The impugned order is set aside and the

Court below is directed to reconsider the application of the petitioner in terms of Sections 63 to 65 of the Act. The Court below shall take up the I.A. only on payment of Rs.10,000/- (Rupees ten thousand only) to the respondents. As a sequel, miscellaneous applications pending, if any, shall stand closed.

A. RAJASHEKER REDDY, J

10-02-2020
Nvl



HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

ARBITRATION APPLICATION No.84 of 2019



02-01-2020

Nvl