

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU
CIVIL REVISION PETITION Nos.1005 AND 1006 OF
2022

COMMON ORDER :

The revision petitioner in the present revisions is the defendant in O.S.No.82 of 2017 on the file of I Additional Chief Judge, Secunderabad. He has moved two interlocutory applications vide I.A.No.523 of 2022 and 526 of 2022 before the trial Court under Section 151 C.P.C. with a prayer to reopen the evidence and to recall DW1 for marking some documents with regard to the cheque bouncing cases that were pending between the parties to the suit. The respondent/plaintiff opposed the petitions. The learned trial Judge, having heard both parties, considered the rival contentions, allowed the applications by imposing a condition on the petitioner herein to deposit 50% of the suit amount within two (2) weeks from the date of order. The basis for passing such an order is the alleged delay caused by the petitioner in disposal of the main suit.

2. Being aggrieved by the said orders, the petitioner/defendant filed two revision petitions under Article 227 of Constitution of India. Since the question involved in both the revisions is one and the same, a common order would suffice to dispose both the revisions.

3. The petitioner has claimed that the Court below failed to consider the financial capacity of the revision petitioner while disposing the interlocutory applications. In fact, the petitioner went to jail for a period of one year as he failed to deposit the amount that was imposed by the Criminal Court in the cheque bouncing case. Therefore, the Court below committed an error in imposing condition on the petitioner for depositing 50% of the suit amount which is more than Rs.25,00,000/- and granting two weeks time for depositing such a huge amount. He has also claimed that the Court below failed to consider the fact that due to covid pandemic many Advocates suffered ill health and due to the mistake committed by the Advocates, the parties should not be penalized. Therefore, even if there is any delay in proceeding with the trial, the party cannot be

directed to deposit 50% of the suit claim even without deciding the suit on merits. Therefore, he sought for setting aside the order.

4. As could be seen from the order of the Court below, it appears that the evidence of the respondent/plaintiff was concluded on 08.09.2021. The evidence affidavit of DW1 was filed on 17.09.2021. The petitioner herein was not ready to subject himself for cross examination on the next date of hearing. Therefore, an amount of Rs.500/- was imposed as costs while adjourning the case from 15.11.2021 to 26.11.2021 and as the petitioner failed to pay costs, the evidence of the defendant was closed on 26.11.2021 and the suit was adjourned to 08.12.2021 for arguments. On 14.12.2021 I.A.No.1570 of 2021 was filed for implementation which was allowed and subsequently there was no progress in view of the failure of the petitioner herein to proceed with the trial. Therefore, the Court below while observing that there was long delay in proceeding with trial, the matter was adjourned for about 14 occasions without any progress and allowed the applications filed by

the petitioner by directing him to deposit 50% of the suit amount.

5. Heard both parties.

6. Now the point for consideration is :

Whether the orders impugned in the revisions are incorrect and liable to be set aside ?

7. **POINT:**

The above referred interlocutory applications were disposed on 30.03.2022. In view of the present revisions, there is no progress in the suit for the past one year. It may be true that there was laches on the part of the petitioner in producing his evidence before the trial Court. The interlocutory applications were filed with a request to reopen the evidence and recall DW1 for further examination. The Court below instead of allowing the application by imposing costs, allowed the petitions by directing the defendant to deposit 50% of the suit amount without deciding the suit claim on merits. If such a direction is allowed to remain on record, it is nothing but directing the defendant to succumb to the terms of the

plaintiff since the suit amount is more than 31 lakhs and the petitioner will have to deposit half of the said amount.

8. Therefore, the orders impugned in the present revisions are set aside to the extent of imposition of direction on the petitioner herein to deposit 50% of the suit amount by directing him to pay a sum of Rs.2,000/- as costs and on condition to present himself before the Court below on the date that will be fixed by the trial Court without any fail. The Trial Court shall fix a date for further examination of DW1 and conclude the evidence on that particular day and dispose the suit within two (2) weeks after conclusion of the evidence.

9. **In the result**, both the petitions filed by the petitioner are allowed on condition that he shall pay Rs.2,000/- towards costs to the respondent/plaintiff. The trial Court on such payment of costs by the petitioner/defendant, reopen the evidence, recall DW1 and permit further examination of DW1 by fixing a day for the attendance of defendant. The Court below shall dispose of the suit in two weeks after conclusion of evidence of DW1.

As a sequel, pending Miscellaneous Applications, if any, shall stand closed.

JUSTICE SAMBASIVA RAO NAIDU

Date: 23.02.2023
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