

THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

C.R.P.No.3935 OF 2018

ORDER:

This civil revision petition under Article 227 of the Constitution of India is directed against the order dated 24.04.2018 in I.A.No.937 of 2017 in I.A.No.811 of 2017 in O.S.No.348 of 2002, on the file of the I-Additional Senior Civil Judge, Ranga Reddy District, wherein the said application filed by the petitioner herein (4th plaintiff) under Order IX Rule 9 CPC seeking restoration of I.A.No.811 of 2007 to its original position by setting aside dismissal order 06.12.2017, was dismissed.

2. Heard the learned counsel for the petitioner. None appeared for the respondents. Perused the record.

3. The petitioner herein is 4th plaintiff, respondent No.1 to 3 herein are plaintiff Nos.1 to 4 and respondent Nos.5 to 30 herein are defendants. The petitioner and respondent Nos.1 to 3 herein filed the suit O.S.No.348 of 2002 for perpetual injunction against respondent Nos.5 to 30 herein. While so, the petitioner filed an application in I.A.No.811 of 2017 for grant of leave to terminate his counsel

Sri Y.Krishnamohan Rao and allow him to engage another Advocate to defend his case as he was not performing the duties properly and not representing their case in appropriate manner. The said application was dismissed for default on 06.12.2017, as the petitioner failed to serve notice on the respondents. The application in I.A.No.811 of 2007 was filed contending that though he served the notice and filed counter in the IA, by oversight, this court dismissed the said petition for default. The trial court by the impugned order dated 24.04.2018 while dismissing the said application observed as under:

“The above mentioned sworn affidavit of the petitioner making allegations not only against the counsel but also the Court by stating that he had already gave notice to the respondents though he did not give notice to respondents which is evident from the memo dt 29.01.2018 filed by him. In fact, he has not shown the previous counsel Sri Y.Krishnamohan Rao as respondent to the petition who in fact filed counter affidavit but no respondent has filed any counter. Thus it goes to show that the petitioner had made false affidavit against the Court. Therefore, it prima facie appears that the petitioner approached the Court with unclean hands and with a false affidavit, hence the petitioner is not entitled for the relief basing upon the false affidavit. The point is answered against the petitioner by holding that the petitioner is not entitled for the relief of setting

aside the dismissal order dt 06.12.2017 passed in I.A.No.811/2017”.

Challenging the said order, the present revision is filed.

4. A perusal of the impugned order reveals that the court below has mistook the facts and disallowed the application on unreasonable grounds by giving invalid reasons. The court below gave a finding that the petitioner had approached this court with unclean hands by filing false affidavit. The said finding is arrived without any basis. It is the prerogative of the party to engage a counsel of his choice and when a counsel who did not perform his duties and not maintained professional ethics, the party is at liberty to terminate his services. As a rule, an Advocate shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client. A litigant must have the freedom to change his Advocate when he feels that the advocate engaged by him is not capable of espousing his cause efficiently or that his conduct is prejudicial to the interest involved in the *lis*, or for any other reason. For whatever reason, if a client does not want to continue the engagement of a particular Advocate, it would be a professional requirement consistent with the dignity of the profession that he should return the brief to the client.

5. For the foregoing reasons, I am of the view that the impugned order suffers from infirmity and the same is liable to be set aside.

6. In the result, the civil revision petition is allowed. The impugned order dated 24.04.2018 in I.A.No.937 of 2017 in I.A.No.811 of 2017 in O.S.No.348 of 2002, on the file of the I-Additional Senior Civil Judge, Ranga Reddy District, is hereby set aside. Consequently, I.A.No.937 of 2017 stands allowed. There shall be no order as to costs.

7. Miscellaneous petitions, if any pending, stand closed.

A.SANTHOSH REDDY, J

23.01.2023
Lrkm