

G. Ramu Vs Toufee Ali Mirza

Court: Andhra Pradesh High Court

Date of Decision: March 20, 2012

Citation: (2012) 4 ALD(Cri) 534

Hon'ble Judges: C.V. Nagarjuna Reddy, J

Bench: Single Bench

Advocate: Ali Farooque, for the Appellant; Ashok Kumar Agarwal, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

C.V. Nagarjuna Reddy, J.

This civil revision petition arises out of order, dated 20.1.2012, in IA No. 153 of 2011 in OS No. 1595 of

2010, on the file of the learned IV Additional Rent Controller-cum-XVI Junior Civil Judge, City Civil Court, Hyderabad. The respondent filed the

above-mentioned suit for eviction of the petitioner. He has filed his chief-examination affidavit on 1.3.2011. As he was not made himself available

for cross-examination, his evidence was eschewed by the lower Court by order, dated 27.4.2011. Evidently, on the same day, his General Power

of Attorney filed his chief-examination affidavit as PW 2. Subsequently, the respondent has returned from abroad and his General Power of

Attorney was cross-examined on 2.11.2011. Immediately on the next day i.e. on 3.11.2011, the respondent filed IA No. 153 of 2011 for setting

aside the order, dated 27.4.2011, eschewing his evidence. This application was allowed by the lower Court by order, dated 20.1.2012. Assailing

the said order, the petitioner filed the present civil revision petition.

2. A perusal of the record shows that in the cross-examination of PW 2, he has admitted that the respondent was present in the Court at the time

of cross-examination. It is, therefore, quite evident that the respondent had the advantage of following the proceedings during which his witness i.e.

PW 2 was cross-examined. Even though there is no specific provision prohibiting the presence of the co-witnesses, who are yet to be examined, at

the time of recording of evidence of other witnesses, as a matter of practice the witnesses, who are yet to be examined, are not permitted to remain

in the Court, the reason being that there is a possibility of the witnesses trying to fill the lacunae left by their co-witnesses. This part, the respondent

has not come out with any reason, as to why being the plaintiff he has not filed an application, before PW 2 was cross-examined on 2.11.2011. In

all fairness, the respondent ought to have offered himself to be cross-examined before PW 2 was cross-examined. Unfortunately, the lower Court

has not considered any of these aspects in allowing the application.

3. Mr. Ashok Kumar Agarwal, Learned Counsel for the respondent, submitted that the only reason for his client in seeking to formally examine

himself is to overcome the objection that may be raised by the petitioner that the suit claim cannot be allowed only on the evidence of the General

Power of Attorney of the plaintiff.

4. Mr. Ali Farooque, Learned Counsel for the petitioner, submitted that while there is no specific bar on the General Power of Attorney deposing

on behalf of the plaintiff, the only requirement is that he should have personal knowledge of the facts and that this aspect can be considered by the

lower Court.

5. In the light of the above discussion, I am of the opinion that the lower Court has committed a serious error in setting aside the order eschewing

the evidence of the respondent and permitting him to depose. The question, whether the evidence of PW 2 can be considered for allowing the suit

claim or not, shall be decided by the lower Court on the basis of the facts and legal position.

6. Accordingly, the civil revision petition is allowed and the order under revision is set aside. As a sequel, CRPMP No. 1838 of 2012 filed by the

petitioner for interim relief, is disposed of as infructuous.