

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION NOS.1157 & 1158 of 2023

COMMON ORDER:

Both the Civil Revision Petitions are filed questioning the order in I.A.Nos.94 & 95 of 2023 passed on 22.02.2022.

2. I.A.No.95 is filed to recognize the special Power of Attorney holder of second plaintiff as his agent. The case in interlocutory application is that the second plaintiff has sustained an injury and there is a blood clot in his brain resulting in paralysis. Therefore, he cannot appear in the Court. It is stated that the said second plaintiff is unable to attend the Court. So, he executed the power of attorney. For the said power of attorney, I.A.No.95 of 2022 has been filed by the agent seeking the prayer as mentioned above. This was opposed by the respondents. But after considering the submissions, with certain directions and restrictions, the application was allowed. This is questioned by the petitioner in Civil Revision Petition (C.R.P.No.1157 of 2023).

3. In CRP.No.1158 of 2023, the challenge is to the order passed in I.A.No.94 of 2023. The reasons in filing the application

are the same, that P.W.2 sustained an injury, and is unable to attend the Court and prosecute the suit. It is also admitted that the evidence of P.W.2 was eschewed by an order of the Court.

4. Learned counsel for the petitioner argues that, unless and until, the order by which the evidence of P.W.2 eschewed, the Trial Court could not have allowed the present application (i.e., I.A.No.94 of 2023).

5. In response to this, the learned counsel for the respondents submits that, in view of the injury sustained by the second plaintiff and his inability to attend the Court, only the cause title is being amended to show that the second plaintiff is being represented by his agent and with the power of attorney as the second plaintiff wants to give evidence on behalf of the plaintiff. Therefore, he supports the impugned order.

6. This Court after hearing both the learned counsels notices that, after the Trial has commenced in view of the amendment of Civil Procedure Code, the request for amendment of the plaint should not be routinely or easily allowed.

7. In the case on hand, neither the prayer in the suit nor the pleadings are amended in any manner. The only

amendment sought is to bring the power of attorney holder on record as the agent of the second plaintiff. Nothing else in the suit has changed. Therefore, this Court finds that no error was committed by the Court in allowing the amendment.

8. As far as the second application is concerned, in the opinion of this Court, the order by which the evidence of P.W.2 was eschewed need not be set aside for other evidence to be introduced on behalf of the petitioners. This order operates only against P.W.2. If he has to give evidence once again, he will have to file an application and invite an order from the Court.

9. As far as P.W.3 or other witnesses are concerned, the order of eschewal will not operate as a bar.

10. Therefore, both the Civil Revision Petitions are dismissed. Any legal and factual pleas that can be raised are left open. There shall be no order as to costs.

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

JUSTICE D.V.S.S.SOMAYAJULU

Date: 20.07.2023
RKS