NC: 2024:KHC:12273
WP No. 6775 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 6775 OF 2023 (GM-CPC)

BETWEEN:

SRI. N. SRINIVASA
S/O NARAYANAPPA,
AGED ABOUT 65 YEARS,
SHOP NO.12, GROUND FLOOR
OF SRI NAGESHWARA SWAMY
TEMPLE PREMISES, NAGARTHPET,
BANGALORE-560 002.

...PETITIONER

(BY SRI. V.K. NARAYANA SWAMY, ADVOCATE)

AND:

BANGALORE AYODHYA NAGARADA
SHIVACHARYA VYSYA (NAGARATNA) SAMITHI
SRI NAGRESHWARA TEMPLE PREMISES,
NAGARTHPET,
BANGALORE-560 002.
REPRESENTED BY ITS HONBLE SECRETARY,
SMT. SHYLAJA UDAYA SHANKAR,
W/O.SRI UDAYASHANKAR,
AGED ABOUT 57 YEARS.
[REGD.UNDER SOCIETIES REGISTRATION ACT]

...RESPONDENT

(BY SRI. JAYANTH DEV KUMAR, ADVOCATE)

Digitally signed by
VANDANA S
Location: HIGH COURT
OF KARNATAKA

THIS W.P IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 06.03.2023 PASSED ON IA NO.11 AND 12 IN SC NO.31/2020 ON THE FILE OF THE VIII ADDITIONAL JUDGE AND ACMM, COURT OF SMALL CAUSES, BENGALURU (SCCH-5) AT ANNEXURE-D BY ISSUANCE OF AN APPROPRIATE WRIT OR ORDER.

THIS PETITION, COMING ON FOR *ORDERS*, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition by the defendant in S.C.No.31/2020 pending on the file of VIII Additional Judge (SCCH-5), Bengaluru, is directed against the impugned order passed on I.A.11 and 12 whereby the said applications filed by the defendant under Order XVII Rule 17 read with Section 151 of the CPC to set-aside the order dated 20.02.2023 and to re-open the case and permission to adduce further evidence of proposed witnesses were rejected by the trial court.

2. A perusal of the material of record would indicate that the respondent-plaintiff instituted the instant suit for ejectment/eviction of the petitioner-defendant from the suit schedule property and for other reliefs. In the said suit being contested by the petitioner-defendant, respondent-plaintiff completed his evidence and the matter was posted for defendant's evidence and since he did not do so, the trial court posted the matter for final argument. At that stage, the petitioner-defendant filed the instant applications seeking permission to adduce further evidence of proposed witnesses and by re-opening the case which was refused by the trial court by passing the impugned order, which is assailed in the present petition.

3. Learned counsel for the petitioner submits that the suit is posted before the trial court on 26.03.2024 and if one more opportunity is provided, petitioner-defendant would adduce further evidence of proposed witnesses on that date without seeking any adjournment under any circumstances whatsoever.

4. In view of the aforesaid facts and circumstances and the specific submission made by the learned counsel for petitioner, I deem it just and appropriate to set aside the impugned order and provide the petitioner-defendant to adduce further evidence of proposed witnesses before the trial court subject to the condition that the petitioner-defendant would adduce the further evidence of proposed witnesses on that date without seeking adjournment whatsoever.

5. In the result, I pass the following;

ORDER

(i) Petition is hereby ***allowed***;

(ii) Impugned order dated 06.03.2023 on I.A.11 and 12 passed by the trial court is hereby set-aside;

(iii) I.A.11 and 12 filed by the petitioner-defendant stand *allowed* subject to the condition that the petitioner-defendant shall adduce evidence of the proposed witnesses on the next date of hearing of the suit;

(iv) Petitioner-defendant is directed to produce the proposed witnesses before the trial court on the next date of hearing;

(v) Order dated 24.02.2023 passed by the trial court issuing warrant is hereby set-aside; and

(vi) Parties shall co-operate with the trial court for expeditious disposal of the suit.

6. In view of disposal of this petition, pending interlocutory applications, if any, also stand *disposed of*.

Sd/-
JUDGE

AV
List No.: 1 Sl No.: 35