

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.827 of 2014

ORDER:

Heard Sri S.Sree Ramachandra Murthy, learned counsel for the petitioner and Sri Y.V.Anil Kumar, learned counsel for respondent Nos.1 and 3.

2. This Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.05-07-2013 in I.A.No.148 of 2013 in O.S.No.23 of 2006 of the XIII Additional District Judge (F.T.C.), Gajuwaka, Visakhapatnam.

3. Petitioner herein is 1st plaintiff in the above suit. During the course of trial in the suit, P.Ws.2 and 3 had filed their affidavit in lieu of chief examination and the matter was posted for their cross examination to 15-02-2013. On that day, both witnesses were present. The 1st respondent-1st defendant did not cross examine them. So the matter was adjourned to 27-02-2013 on payment of costs. On 27-02-2013 also, 1st respondent did not cross examine P.Ws.2 and 3. Therefore, the Court below closed the evidence of P.Ws.2 and 3 and posted the matter to 04-04-2013 for cross examination of P.W.4.

4. On 04-04-2013, 1st respondent filed I.A.No.148 of 2013 under Order 18 Rule 17 CPC to recall P.Ws.2 and 3 for the purpose of cross examination pointing out that on 27-02-2013 when the suit was posted for cross examination of P.Ws.2 and 3, his counsel was out of station and so could not cross examine P.Ws.2 and 3. He contended that the failure to cross examine P.Ws.2 and 3 was therefore not willful or wanton and therefore the petition be allowed.

5. This application was opposed by the petitioner. He pointed that ample opportunities were given to 1st respondent to cross examine P.Ws.2 and 3 and the right of cross examination itself was forfeited on 27-02-2013. It was further contended that 1st respondent was willfully absent and also did not fulfill the earlier conditions imposed by the Court.

6. By order dt.05-07-2013, the Court below, in spite of noticing that earlier opportunities given to 1st respondent to cross examine P.Ws.2 and 3 were not utilized, held that since that could cause prejudice to 1st respondent, one last opportunity can be given to 1st respondent to cross examine them subject to payment of costs of Rs.500/- each to P.Ws.2 and 3.

7. Challenging the same, this Revision Petition

is filed.

8. Learned counsel for the petitioner contended that the Court below ought to have taken note of the fact that the right to cross examination of P.Ws.2 and 3 was forfeited by it and since no application was filed to recall the said order, it should have dismissed application under Order 18 Rule 17 CPC to recall these witnesses for cross examination.

9. Learned counsel for the respondent Nos.1 and 3 on the other hand contended that very Revision Petition is not maintainable challenging the order passed under Order 18 Rule 17 CPC.

10. I have noted the submissions of both sides.

11. From the facts narrated above, it is clear that in spite of giving opportunities to cross examine P.Ws.2 and 3, 1st respondent did not avail of it and on 27-02-2013, when P.Ws.2 and 3 were present and were not cross examined, the Court closed the cross examination of P.Ws.2 and 3. However, 1st respondent filed the application to recall P.Ws.2 and 3 contending that his counsel was out of station on that day and therefore could not cross examine them and the same was allowed on payment of costs by Court below.

12. In my considered opinion, cross examination

of a witness is to be done only by counsel and normally it is not done by any party and for failure of his counsel to cross examine P.Ws.2 and 3, 1st respondent cannot be made to suffer. Therefore, the Court below, in my opinion, rightly allowed I.A.No.148 of 2013 and gave one last opportunity to 1st respondent to cross examine P.Ws.2 and 3 on payment of costs.

13. Coming to the other contention raised by the learned counsel for the petitioner, by the closure of evidence of P.Ws.2 and 3, no doubt, the right of cross examination of P.Ws.2 and 3 had been forfeited. But the Court is not precluded, on being shown sufficient cause by 1st respondent, to allow recall of those two witnesses for cross examination by 1st respondent. In the present case, I am satisfied that the Court below had rightly permitted 1st respondent to cross examine P.Ws.2 and 3 as a last chance having accepted their plea that on account of absence of their counsel on 27-02-2013, they could not cross examine P.Ws.2 and 3. While doing so, the Court below is deemed to have set aside its own order forfeiting the right to cross examination of P.Ws.2 and 3 by 1st respondent. No exception can be taken to it on the plea that the separate application to recall the order of forfeiting of right to cross examine P.Ws.2 and 3 was not filed by 1st respondent. In my considered opinion, the

said prayer is inherent in I.A.No.148 of 2013.

14. I am also of the opinion that undoubtedly Revision Petition would lie under Article 227 of the Constitution of India questioning any order passed on an application under Order 18 Rule 17 CPC and the contention of the learned counsel for 1st respondent that the Revision Petition itself does not lie, cannot be accepted. Of course it is not necessary for this Court, in the exercise of such jurisdiction, to interfere with each and every interlocutory order of the lower Court as held in **Karnapu Satyanarayana Vs. Chappa Venkata Rao**^[1].

15. Therefore, I do not see any merit in the Civil Revision Petition and the same is accordingly dismissed. No costs.

16. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01-07-2015

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^[1] 2010 (5) ALD 689