

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

ORIGINAL SIDE APPEAL No.42 of 2015

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ORDER: (per Hon'ble Sri Justice Nooty Ramamohana Rao)

This Original Side Appeal is preferred against the order passed by the learned Company Judge in Company Application Nos.1166 and 1167 of 2015 in Company Petition No.5 of 2014.

Company Application No.1166 of 2015 is filed seeking to re-open the evidence of the company petitioner while Company Application No.1167 of 2015 is filed for recalling P.W.1 namely Sri Ajay Bagri for purpose of cross-examination in the aforesaid company petition.

Learned company Judge dealt with both these company applications and by the impugned order dated 25.08.2015 dismissed them, principally for the reason that P.W.1, when tendered, has not been cross-examined even on payment of costs. Thereafter, the right of cross-examining P.W.1 was forfeited and the respondent in the company petition proceeded to examine two witnesses i.e. R.W.1 and R.W.2, at that stage the present applications have been filed.

The petitioner in the company petition opposed these applications, principally for the reason that the loose ends which have been extracted during the cross-examination of R.Ws.1 and 2 are sought to be tide up by subjecting the P.W.1 for cross-examination, that would cause prejudice to the case of the petitioner in the company petition. In these circumstances, for sheer default that had gone for too long in the matter, P.W.1 cannot be recalled at this stage.

Sri Milind G Gokhale, learned counsel for the appellant, would contend that he

intended to put certain suggestions to P.W.1, so that while arguing the company petition, appropriate steps and measures can be taken to bring home the theme behind such suggestions. Sri Milind G Gokhale, learned counsel, would submit that due to a grave setback in his health, he could not attend to the hearing of this company petition when P.W.1 was tendered for cross-examination. Since only few relevant suggestions are sought to be put to P.W.1, we consider that the same purpose can be achieved by making the respondent in the company petition, the appellant herein to formulate such suggestions by way of an affidavit and to serve the same on the opposite side in advance, so that the opposite side can take necessary instructions and carry on with the matter. Accordingly, Sri Milind G Gokhale, learned counsel for the appellant, has formulated various suggestions namely A-K in paragraph No.4 of the affidavit filed by Sri Akash Garg, S/o.Devendra Garg on behalf of the appellant.

Sri B.Chandrasen Reddy, learned counsel appearing for the respondent – company petitioner filed a counter-affidavit with specific reference to the affidavit dated 26.10.2015 filed into the Court today.

Wherever the relevant suggestion is required to be answered/clarified, Sri Ajay Bagri has done that. Wherever an objection is intended to be taken by Sri Ajay Bagri for the corresponding suggestion left by Sri Akash Garg, the same has been done. Therefore, we consider that the ends of justice would be served more usefully by treating the affidavit filed by Sri Akash Garg containing the suggestions A-K in paragraph No.4 thereof and the affidavit filed by Sri Ajay Bagri answering/denying the various suggestions referred to supra as a part of the record of the company petition itself. It is, however, open to the company Court either to independently mark them or by treating them as part of the record to deal with the same while deciding the company petition finally, in as much as the company petition is now ripe for hearing.

With this order, the Original Side Appeal stands disposed of at the admission stage. No order as to costs.

The miscellaneous applications, if any shall also stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

12.11.2015

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