

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

CIVIL REVISION PETITION Nos.177 and 311 of 2015

COMMON ORDER:

Heard Sri Sai Gangadhar Chamarty, learned counsel for the petitioners, and Sri P.Rajesh Babu, learned counsel for the respondent in both the Revisions.

2. C.R.P.No.177 of 2015 is filed challenging the order dt.20.11.2014 passed in I.A.No.1386 of 2014 in O.S.No.350 of 2010 on the file of the I Additional Senior Civil Judge, Rajahmundry, East Godavari District. The other revision, C.R.P.No.311 of 2015, is filed challenging the order dt.20.11.2014 passed in I.A.No.1437 of 2014 in the above suit.

3. The petitioner in both the Revisions is the plaintiff in the suit. He filed the suit for recovery of money against the respondent basing on a promissory note. Written statement was filed opposing the suit claim. Issues were framed and subsequently, an *ex parte* decree was passed on the ground that the respondent/defendant failed to cross-examine P.W.1. The said order was later recalled and the suit was restored to the file of the Court below.

4. Thereafter, the evidence of P.W.1 commenced and concluded on 24.09.2014. The

respondent/defendant then filed his affidavit in lieu of chief-examination on 10.10.2014 and the matter was posted to 13.10.2014 for disposal of the petition filed for condoning the delay and for appointing a Commissioner.

5. At that stage, the petitioner herein filed I.A.No.1386 of 2014 under Section 151 C.P.C. to reopen his evidence. He also filed I.A.No.1437 of 2014 under Order 16 Rule 1(2) and Section 151 C.P.C. contending that after filing of the written statement and at the time when the I.A. filed by the respondent for setting aside the *ex parte* decree passed by the trial Court was pending, the respondent had approached him through one Rayudu Satish, and therefore, he should be permitted to examine this witness to establish the fact that the respondent had tried to compromise the matter through the said witness Rayudu Satish.

6. Counter affidavit was filed by the respondent in both these applications contending that there is no whisper about Rayudu Satish either in the suit notice or in the plaint or in the chief-affidavit.

7. By separate orders dated 20.11.2014, the Court below dismissed both the applications. It held that the said person Rayudu Satish was neither a party to the suit proceedings nor is alleged to be an attester or scribe to the alleged promissory note and if really the said

person approached the petitioner through Rayudu Satish for compromise after filing the written statement, the petitioner would have mentioned the same in his chief-examination affidavit or state the same during his cross-examination.

8. Challenging the same, both these revisions are filed.

9. Learned counsel for the petitioner contended that the orders passed by the Court below are perverse and the Court below is not correct in expecting the petitioner to state about the event of the respondent approaching the petitioner through Rayudu Satish for compromise, since it happened after the *ex parte* decree was passed and before it was set aside, in the suit notice or in the plaint. He further contended that merely because the said person was not a party to the suit proceedings and not an attestor or scribe of the suit promissory note, he cannot be said to be not a necessary person to be examined by the petitioner.

10. Learned counsel for the respondent, on the other hand, pointed out that in the cross-examination of P.W.1, there is only a mention of a mediation initiated by the petitioner through Rayudu Satish in the year 2009, and there is no mention about any such attempt for compromise after the suit was decreed *ex parte*. He,

therefore, contended that the petitioner cannot be allowed to summon the said person as a witness.

11. Order 16 Rule 1(1) C.P.C. enjoins on a party to give a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summons to such persons for their attendance in the Court. Sub-rule (2) of Rule 1 of Order 16 requires a party desirous of obtaining any summons for the attendance of any person to file in Court an application stating therein the purpose for which the witness is proposed to be summoned. Sub-rule (3) of Rule 1 of Order 16 states that the Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

12. It is true that the petitioner has not initially indicated that he intended to examine Rayudu Satish as his witness in the list filed by him in the Court. But this does not preclude him from seeking summons to Rayudu Satish to give evidence, since sub-rule (3) of Rule 1 of Order 16 permits the Court to summon any witness at the instance of a party, even if his name is not mentioned in the list as per sub-rule (1), if such party shows sufficient

cause for the omission. According to the petitioner, mediation through Rayudu Satish, at the instance of the respondent, took place after the *ex parte* decree was passed and before it was set aside. Therefore, after the *ex parte* decree was set aside, the petitioner was entitled to seek summons to be issued to the said witness to give evidence on his behalf. The fact that in the cross-examination of P.W.1, nothing is stated by P.W.1 with regard to the mediation or compromise talks after the *ex parte* decree, in my opinion, is irrelevant. Questions put in the cross-examination obviously did not deal with such mediation which took place after the *ex parte* decree was passed. The petitioner cannot be deprived of opportunity to prove his case by examining the said Rayudu Satish and no prejudice would be caused to the respondent inasmuch as the respondent has opportunity to cross-examine the said witness. In this view of the matter, I am of the opinion that the orders passed by the Court below cannot be sustained, and they are accordingly, set aside.

13. Accordingly, both the Civil Revision Petitions are allowed; I.A.No.1386 of 2014 and I.A.No.1437 of 2014 in O.S.No.350 of 2010 on the file of the I Additional Senior Civil Judge, Rajahmundry, East Godavari District, are also allowed. No costs.

14. As a sequel, miscellaneous petitions

pending, if any, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 25-06-2015

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