

***THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

+ CIVIL REVISION PETITION No.4598 of 2015

% Dated : 23.12.2015

Y. Prabhakara Reddy,
S/o. Y. Pedda Venkata Subba Reddy,
Aged about 52 years, R/o. H.No.45/142/26-E,
Machani Somappa Colony,
Near VR Colony,
Kurnool, Kurnool District.

..... Petitioner

AND

\$ K. Pramod Kumar Reddy,
S/o. K. Rajeswara Reddy,
Ramalingeswara Nagar,
Near VR Colony,
Kurnool, Kurnool District

\$ K. RAjeswara Reddy,
S/o. K. Eswar Reddy,
Aged about 65 years,
R/o. H.No.45/142/35-M-M-1,
Ramalingeswara Nagar,
Near VR Colony,
Kurnool, Kurnool District.

..... Respondent

! Counsel for Petitioner : Sri B.S. Reddy

**^Counsel for Respondents : Sri Virupaksha Dattatreya
Gouda**

<GIST :

>HEAD NOTE :

? Cases referred :

2009 (1) ALD 421

1998 (2) ALD 783 (DB)

AIR 1990 MADRAS 237
2008 (1) ALD 268
2013 (5) ALD 319
AIR 1964 GUJARAT 26 (Vol. 51, C. 4)
2015 LawSuit (Del) 86
1992 LawSuit (Guj) 92

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CIVIL REVISION PETITION No.4598 of 2015

Between:

Y. Prabhakara Reddy,
S/o. Y. Pedda Venkata Subba Reddy,
Aged about 52 years, R/o. H.No.45/142/26-E,
Machani Somappa Colony,
Near VR Colony,
Kurnool, Kurnool District.

.. Petitioner

AND

K. Pramod Kumar Reddy,
S/o. K. Rajeswara Reddy,
Ramalingeswara Nagar,
Near VR Colony,
Kurnool, Kurnool District & another

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 23.12.2015

SUBMITTED FOR APPROVAL:

-

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

- | | | |
|---|--|-----|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes |

3	Whether His Lordship wish to see the fair copy of the Judgment?	Yes
---	---	-----

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CIVIL REVISION PETITION No.4598 of 2015

ORDER:

This civil revision petition is filed against an order, dated 09.10.2015, in I.A.No.387 of 2015 in O.S.No.56 of 2010, on the file of Family Court, Kurnool District, wherein the Court below dismissed the application filed by the petitioner/plaintiff under Order 18 Rule 3-A read with Section 151 of the Civil Procedure Code, 1908 (for short, 'C.P.C.') seeking the Court below to eschew the evidence of D.W.1 since he was examined even before the first defendant was examined. The petitioner/plaintiff filed suit for recovery of money for a sum of Rs.22,00,000/- with subsequent interest basing on certain cheques said to have been received by the second respondent on behalf of his son, who is the first defendant. It is the case of the petitioner/plaintiff that the second defendant received four cheques from the plaintiff undertaking to pay money to the first respondent. Both the respondents failed to repay the amount due under those cheques, when demanded by him. Hence, the suit for recovery of said money.

2. The second respondent filed written statement contending that he filed O.S.No.49 of 2008, on the file of the Principal District Judge, Kurnool, against the petitioner claiming an amount of Rs.13,32,439/- based on the promissory note which was decreed on 04.02.2010 and opposed the suit.

3. The first respondent, who is Defendant No.1 in the suit filed Memo adopting the written statement filed by the second respondent, who is Defendant No.2.

4. I.A.No.387 of 2015 is filed by the petitioner/plaintiff stating that Defendant No.2 was examined as D.W.1 and now Defendant No.1 filed chief examination affidavit without filing any application as envisaged under Order 18 Rule 3-A read with Section 151 C.P.C. As such the evidence of D.W.1 should be eschewed. The trial Court dismissed the said application, against which the present civil revision petition is filed.

5. Learned counsel for the revision petitioner submits that the trial Court should not have received the chief affidavit of Defendant No.1 to be examined as D.W.2 without any application under Order 18 Rule 3-A read with Section 151 C.P.C. But when the application is filed under Order 18 Rule 3-A read with Section 151 C.P.C., the trial Court erroneously dismissed the same.

6. In support of his contention, learned counsel for the revision petitioner relies on the following decisions:

(i) ***G. Gayathri and another Vs. M. Bhagyalakshmi and others***^[1];

(ii) ***Devarapathi Pattabhi Ramaiah Vs.***

Daruhiri Lakshmi Presanna and Another^[2];

(iii) ***Ayyasami Gounder and others Vs. T.S. Palanisami Gounder^[3]***; and

(iv) ***Order in C.R.P.(PD).No.4215 of 2008, dated 13.02.2009, of Madras High Court.***

7. On the other hand, learned counsel for the respondents submits that Order 18 Rule 3-A read with Section 151 C.P.C. is applicable in case if the party wants to examine before the witnesses before he is examined. It does not apply to the order of examination of the parties.

8. In support of his contention, learned counsel for the respondents relies on the following decisions:

(i) ***Namala Govindu Vs. B. Lakshman and another^[4]***;

(ii) ***Y. Prabhakara Rao Vs. P.S. Anil Kumar and others^[5]***;

(iii) ***Shah Hiralal Himatlal and others Vs. M.G. Pathak and others^[6]***;

(iv) ***Harish Kumar Bhateja Vs. Bhagwan Dass and others^[7]***; and

(v) ***Chandrakant Chimanlal Shah Vs. Chimanlal Ambalal Shah^[8]***.

9. Before going to the rival contentions, it is necessary

to extract Order 18 Rule 3-A C.P.C. since the petitioner is relying on the said provision.

“3-A. Party to appear before other witnesses –

Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.”

10. Order 18 Rule 3-A C.P.C. speaks that if the party wants to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court permits him to appear as his own witness at a later stage. A plain reading of the provision does not indicate that it applies to order of examination of the parties.

11. In the decision reported in ***Namala Govindu’s Case (4 supra)***, the second defendant was examined before the first defendant was examined and later when the first defendant wanted to examine after the second defendant is examined, the plaintiff took an objection by filing Memo before the Court below. The said Memo was rejected. When the matter was taken up, the learned Single Judge held as under:

“I am unable to agree with the contention of the learned Counsel for the revision petitioner. Both the respondents admittedly are appearing through the same counsel and their defence is the same. As per Rule 3-A of Order 18 CPC, if a party wishes to appear as a witness, he has to examine himself before any other witness on his behalf is examined, unless the Court permits him to appear as his own witness at a later stage. Which of the several defendants in a suit has to lead evidence in the first instance is not laid down by CPC or the Civil Rules of Practice, but where some of the defendants support the case of the plaintiff and where some of the defendants oppose the case of the plaintiff, defendants who support the case of the plaintiff should lead evidence in the

first instance before the defendants, who are opposing the case of the plaintiff lead their evidence. As among the defendants who are opposing the claim of the plaintiff, they can lead evidence as per their choice. Neither the Court nor the plaintiff can compel any such defendant to local evidence in the matter stated by him.”

The same was followed in ***Y. Prabhakara Rao’s Case (5 supra)***.

12. In ***Shah Hiralal Himatlal’s Case (6 supra)***, while interpreting Order 18 C.P.C., the learned Single Judge held as under:

“If all the defendants completely oppose the plaintiff’s case, then the question of order of leading evidence amongst the defendants is immaterial.”

which was followed in ***Harish Kumar Bhateja’s Case (7 supra)***.

13. In ***Chandrakant Chimanlal Shah’s Case (8 supra)***, While interpreting Section 135 C.P.C., the learned Single Judge held as under:

“Under Sec. 135 of the Indian Evidence Act, 1872, it has been provided that the order in which witnesses are produced and examined would be regulated by the law for the time being in force relating to Civil and Criminal Procedure respectively and in absence of any such law by the discretion of the Court. Sub-rule (2) of Rule 2 of Order 18 does not provide for the order in which the other party has to lead evidence when there are more than one defendants. Thus, when there is no specific provision on this aspect, the matter would rest on the discretion of the Court as provided in Sec. 135 of the Evidence Act and that discretion, obviously, has to be exercised on sound judicial principles, which, in the instant case, are reflected in the decision of this Court in Hirdial’s case (supra). The principles laid down in that decision have already been adhered to by the Courts in Orissa as can be

seen from the decision in *Jhumpa Bewa & Ors. v. Sahadeb Rout & Ors.*, of The Orissa High Court (reported in AIR 1987 Orissa 209). After referring to the order of leading evidence indicated by this Court in *Hiralal's case* (*supra*), the Orissa High Court observed that these principles are adhered to by all the Courts in the State of Orissa. A similar view was taken by the Andhra Pradesh High Court in *Bommidi Vasudeva Murthy v. Bommidi Bhasker Rao & Ors.*, (reported in ILR 1975 AP 307, 308)."

14. In view of the above, the trial Court has also held that the prohibition under Order 18 Rule 3-A C.P.C. is only with regard to examination of witnesses of a party before examination of party and not with regard to order of examination of parties to proceedings especially when the plea of parties is one and the same and also when it is not pleaded that there is no collusion between the party examined in the first instance and the opposite party. The decision reported in ***G. Gayathri's Case (1 supra)*** deals with filing of application after the examination of other witnesses when the party wants to examine at later part of time after its witnesses were examined. That case dealt with an application filed by the second plaintiff in suit to examine her husband as first plaintiff. In that case, the second plaintiff wanted to examine her husband as first plaintiff not as an independent witness but to depose on her behalf, as if he is the first plaintiff. The above decision also has no application to the facts of the case. Similarly, the decision reported in ***Devarapathi Pattabhi Ramaiah's Case (2 supra)*** deals with the stage when the application is made by the party for examining itself after its witnesses are examined. Similarly, the decision rendered in ***Ayyasami Gounder's Case (3 supra)*** also deals with the examination of witnesses of party at a later stage before the party is examined. It also deals with failure of persons to give reasons

for examining himself at later stage. The decision of Madras High Court in ***C.R.P.(PD).No.4215 of 2008, dated 13.02.2009***, also deals with examination of witnesses before the party is examined wherein Defendant No.3 filed chief examination in that case without seeking permission under Order 18 Rule 3-A C.P.C. after its witnesses were examined and the same has also no application. The decision reported in ***G. Gayathri's Case (1 supra)*** also deal with the issue on the point wherein when the husband was permitted to be examined in the first instance, then before she was examined herself as witness. In view of the above, the decision in ***Namala Govindu's Case (4 supra)***, relied by the learned counsel for the respondents directly deal with the issue and in ***Chandrakant Chimanlal Shah's Case (8 supra)***, it is clearly held that under Section 135 of the Indian Evidence Act, 1872, it is ultimately the discretion of the Court.

15. In view of the above, I do not find any error in the order passed by the Court below dismissing the application in I.A.No.387 of 2015 in O.S.No.56 of 2010.

16. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, in this civil revision petition shall stand closed.

A.RAJASHEKER REDDY, J

Date: 23rd December, 2015

Note: L.R. Copy to be marked.

(B/o.)
KL



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

-
-
-
-
-
-
-

CIVIL REVISION PETITION No.4598 of 2015

KL

[1] 2009 (1) ALD 421

- [\[2\]](#) 1998 (2) ALD 783 (DB)
- [\[3\]](#) AIR 1990 MADRAS 237
- [\[4\]](#) 2008 (1) ALD 268
- [\[5\]](#) 2013 (5) ALD 319
- [\[6\]](#) AIR 1964 GUJARAT 26 (Vol. 51, C. 4)
- [\[7\]](#) 2015 LawSuit (Del) 86
- [\[8\]](#) 1992 LawSuit (Guj) 92