

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.3455 of 2015

Date: 18-12-2015

Between:

M/s. E.T.A. Star Property Developers Ltd.,

Represented by its Director, Hyderabad

.. Petitioner

AND

B.V.V. Ramana and 17 others

.. Respondents

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.3455 of 2015

ORDER:

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The plaintiff in O.S.No.389 of 2007 on the file of X Additional Chief Judge, City Civil Court, Hyderabad is the petitioner herein. The said suit was filed for recovery of an amount of Rs.3,77,62,500/- The evidence on behalf of the plaintiff was completed. It appears that defendants 1 to 3 who were set *ex parte* earlier filed an application in I.A.No.618 of 2011 for setting aside the said order and the same was ordered on 18-04-2012. The Court suo motu allowed the said defendants to cross-examine PWs.1 to 3 whose evidence was already closed. At that stage, an application was filed by the respondents 1 to 15 herein stating as follows:

“..... I submit that the cross-examination of the above witnesses was not conducted on behalf of other defendants the defendants No.4 to 21 and defendant No.1 to 3. I submit that the defendant No.1 to 3 have filed an application to recall PW.1 to PW.3 in the above case for the purpose of cross-examination by them and the said petition is pending before this Hon'ble Court. I submit that if PW.1 to PW.3 are being recalled for the purpose of being cross-examined by defendant No.1 to 3 there will no prejudice caused to the said PW.1 to PW.3 if the other defendants other than defendant No.17 to 19 also would cross-examined the above said witnesses as the witnesses were cross-examined by the defendant No.17 to 19 in fact defendant No.17 to 19 are non else than our own companies and the defendant NO.12 also is our company the cross-examination of the witnesses were not conducted on behalf of defendant No.12 and the other defendants are all shown as defendant only in their capacity as either partners or the directors of defendant No.12 and 17. In these circumstances, it is submitted that if an opportunity is given to other defendants to cross-examine the PW.1 to 3 no prejudice will be caused the PW.1 to PW.3.

Hence, it is prayed that this Hon'ble Court may be pleased to allow the defendants 4 to 21 except defendant No.1 to 3 and 17 to 19 to cross-examine the recalled witness PW.1 to PW.3 in the interest of justice and pass such other or order as are deem fit and proper in the nature and circumstances of the case.”

The said application was allowed holding as follows:

“This petition is filed by defendants 4 to 21 with exception of 17 to 19 seeking leave to cross-examine PW.1 to PW.3 who were already recalled for the cross-examination of defendants 1 to 3 suo motu by this Court. This petition was filed in the month of December 2014. Till today it was not numbered. Today notice was given to plaintiff and other defendants were already served with notice. All the counsels reported no counter.

Heard.

Since PW.1 to PW.3 were already recalled suo-moto by this Court, to cross-examine by defendant Nos.1 to 3, no prejudice will be caused in allowing the present petition to cross-examine PW.1 to PW.3.

In the circumstances, the petition is allowed.....”

Learned counsel for the petitioner submits that the notice was issued on 14-07-

2015 itself and the Court recorded that there is no counter on their behalf and passed the impugned order. He further submits that the evidence of PWs.1 to 3 was already completed after cross-examination by the contesting defendants 1 to 15 herein and the trial Court should not have allowed further cross-examination by the defendants who already cross-examined consequent to the cross-examination by Defendants 1 to 3.

I have carefully perused the affidavit filed in support of the application of the contesting defendants, who cross-examined earlier in I.A.No.746 of 2015. No whisper is made in support of the plea for cross-examination and in the absence of the same, the Court below should not have allowed further cross-examination by the defendants, who already cross-examined the plaintiff. It is not a question of challenge, but it is a question of propriety. In fact, the contesting defendants did not say how they are prejudiced and on what aspects they want to cross-examine them further. Though the plaintiff may not have any objection with regard to cross-examination by the defendants 1 to 3, who did not cross-examine them earlier, the plaintiff may not be asked to face unnecessary cross-examination after closure of the cross-examination by the contesting defendants. In the circumstances, the order dated 14-07-2015 in I.A.No.746 of 2015 in O.S.No.389 of 2007 passed by the learned X Additional Chief Judge, City Civil Court, Hyderabad is patently irregular and the same is accordingly liable to be set aside.

Accordingly, the order dated 14-07-2015 in I.A.No.746 of 2015 in O.S.No.389 of 2007 passed by the learned X Additional Chief Judge, City Civil Court, Hyderabad is set aside and the Civil Revision Petition is allowed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 18-12-2015

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