

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION Nos.3372 and 3426 of 2015

COMMON ORDER:

The petitioners in these two cases are the same. They are the defendants in O.S.No.164 of 2008 on the file of the learned Senior Civil Judge, Bhimavaram, West Godavari District.

O.S.No.164 of 2008 was filed for recovery of a sum of money based on a promissory note. The trial Court closed the evidence of PW.1. Thereupon, the petitioners/defendants filed I.A.No.82 of 2015 for the purpose of recalling PW.1 for cross-examination. This I.A. was allowed on 06.02.2015 on payment of costs of Rs.100/- and PW.1 was recalled for cross-examination on 06.03.2015. However, though PW.1 was present on the said date, the petitioners/defendants were not ready to cross-examine him. Thereupon, PW.1's evidence was again closed. The petitioners/defendants then filed I.A.No.620 of 2015 in the suit to reopen the evidence of PW.1 for cross-examination and I.A.No.621 of 2015 was filed for recalling PW.1 for cross-examination. By separate orders dated 04.08.2015, the trial Court dismissed both the I.As. Aggrieved thereby, the petitioners/defendants are before this Court.

C.R.P.No.3372 of 2015 is filed against the order passed in I.A.No.620 of 2015 in O.S.No.164 of 2008 while C.R.P.No.3426 of 2015 relates to the order passed in I.A.No.621 of 2015 in O.S.No.164 of 2008.

Sri Sai Gangadhar Chamarty, learned counsel for the petitioners/defendants, contended that the absence of the Senior Counsel appearing for his clients before the Court below was the reason for not cross-examining PW.1 on 06.03.2015. He pointed out

that this aspect of the matter was not denied by the respondent/plaintiff in his counter.

However, perusal of the orders passed by the trial Court reflects that the earlier I.A. filed by the petitioners/defendants for the same relief was allowed on payment of costs but the petitioners/defendants failed to take advantage of the same and did not cross-examine PW.1 on 06.03.2015, the date on which he was recalled for such cross-examination. The lame excuse put forth by the petitioners/defendants was that their counsel was out of station.

It is an admitted fact that PW.2 was cross-examined by the junior counsel who was very much present on 06.03.2015 when PW.1 presented himself for cross-examination. In spite of the same, the junior counsel did not choose to cross-examine him and allowed PW.1's evidence to be closed. It is also not the case of the petitioners/defendants that their Senior Counsel was unaware of the date on which PW.1 was recalled for cross-examination. Being well aware of the same, if the said counsel chose to be away from station, it was for the petitioners/defendants to make necessary alternate arrangements to cross-examine PW.1. The suit is of the year 2008 and these kind of delays are to be avoided at least at this late stage.

This Court therefore finds no *bona fides* in the attempt of the petitioners/defendants to again recall PW.1 for cross-examination. The orders passed by the trial Court do not warrant interference on facts or in law.

The Civil Revision Petitions are accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

Date:21.09.2015

GJ