

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

CIVIL REVISION PETITION Nos.1344 & 1432 of 2015

COMMON ORDER:

Heard Sri V. Hari Haran, learned counsel for the petitioner, Sri T. Vinod Kumar, learned counsel for the respondent. Since both these Revision petitions arise out of the same suit and between the same parties, they are being disposed of by this common order.

2. These two Revision petitions are filed under Article 227 of the Constitution of India challenging the order dated 29.01.2015 passed in I.A.No.488 of 2014 in O.S.No.2014 of 2013 by the XX Junior Civil Judge, City Civil Court, Hyderabad.

3. The petitioner in both these Revision petitions is the defendant in the suit. The suit was filed by the respondent/plaintiff seeking to declare the transfer order dt.28.03.2013 issued by the petitioner transferring him from Hyderabad to Mumbai as illegal, and for a consequential relief of perpetual injunction.

4. Written statement was filed by petitioner opposing the suit averments.

5. Issues were framed and the trial commenced. Evidence of the respondent was closed on 20.10.2014. Thereafter, the case was posted for the petitioner's evidence on 31.10.2014. Three adjournments later, on 25.11.2014 the petitioner filed I.A.No.488 of 2014 to reopen the evidence of the respondent for the purpose of recalling PW.1 and I.A.No.489 of 2014 under Order 18 Rule 17 C.P.C to recall PW.1 for the purpose of further cross-examination by the counsel for the petitioner. In the affidavits filed in support of these applications, it is stated that at the time of cross-examination of PW.1 in the main suit, the counsel for the

petitioner could not put some questions in cross-examination to PW.1 due to oversight and more specifically with regard to certain documents filed by the petitioner at the time of hearing of the interlocutory application in the main suit. The petitioner therefore prayed to recall PW.1 for the purpose of further cross-examination and to reopen the suit.

6. Counter affidavit was filed in these two applications by the respondent opposing the prayers therein. He contended that after the chief examination affidavit of PW.1 was filed, the petitioner had sought five adjournments for cross-examination of PW.1; that the Court adjourned the matter conditionally by imposing costs, and thereafter, the petitioner cross-examined PW.1 on 20.10.2014; on that day, the evidence of respondent was closed and the case was posted for the evidence of the petitioner on 31.10.2014; thereafter, the petitioner took three more adjournments for filing chief examination affidavit, and ultimately, the matter was posted to 25.11.2014, and on which day, instead of filing the chief examination affidavit, the present I.As were filed by the petitioner. It was contended that the applications were filed with an oblique motive to protract the litigation on one pretext or the other. It was also pointed out that the petitioner's counsel had full knowledge about the filing of documents at the time of enquiry in I.A. and hence, he should have posed the questions then itself and the reasons mentioned in the affidavits filed along with the I.As are not sufficient to reopen and recall PW.1.

7. By common order dated 29.01.2015, the Court below dismissed both applications. It observed that the affidavit in lieu of chief examination of PW.1 was filed on 17.04.2014; documents were marked on 2.09.2014; the case was posted for cross-examination of PW.1 on 11.09.2014 and on that day the petitioner's counsel took adjournment for cross-examination. It held that the matter was posted for cross-examination of PW.1 on 24.09.2014, then again it was adjourned at the request of the petitioner by imposing costs; on 9.10.2014 again it was

adjourned to 20.10.2014; and on 20.10.2014 PW.1 was cross-examined and the respondent reported no further evidence. It held that the matter was adjourned for defendant's evidence on 31.10.2014 and conditionally on 11.11.2014 and 20.11.2014 and finally to 25.11.2014 and then these applications have been filed. It held that the Court had given sufficient adjournments to the petitioner but the petitioner kept silent since a long time and after taking several adjournments, he filed these applications on the ground that his counsel was unable to put some questions. Therefore, it held that the reasons mentioned in the applications are not sufficient and bona fide, and therefore, the applications are dismissed.

8. Challenging the same, these two Revision petitions are filed.

9. Learned counsel for the petitioner contended that no doubt some adjournments had been sought by the learned counsel for the petitioner in the Court below before filing the present applications, but under Order 18 Rule 17 C.P.C., Court has got power to recall PW.1 for the purpose of cross-examination; and since the suit is not at an advanced stage, indulgence may be shown to the petitioner by giving it an opportunity to cross-examine PW.1 on the documents filed along with the I.A.

10. Learned counsel for the respondent, on the other hand, refuted these contentions contending that the order of the Court below is correct and does not warrant any interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India.

11. Order 18 Rule 17 C.P.C states that the Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

12. In **Vadiraj Naggappa Vernekar(d)Through Lrs. vs. Sharad Chand Prabhakar Gogate**^[1] the Supreme Court has held that the power to recall and examine the witnesses is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties.

13. Therefore, this power under Order 18 Rule 17 C.P.C., cannot be routinely exercised as is sought by the petitioners. The chief examination affidavit of the respondent/PW.1 was filed on 17.04.2014 and he was cross-examined on 20.10.2014 i.e., six months later, that too, after five adjournments. So the petitioner's counsel had ample time to decide what questions should be put in the cross-examination of PW.1. After the evidence of the respondent was closed and after taking three more adjournments to file chief examination affidavit of PW.1, the present I.As were filed by the petitioner. I am of the opinion that the petitioner has not acted in a bona fide manner and the reasons given by him for seeking reopening of the evidence of the respondent/PW.1 and to recall PW.1, are also not bona fide.

14. I do not find any merit in the revision. Accordingly, the civil revision petition is dismissed. No order as to costs. As a sequel, miscellaneous petitions, if any, shall stand closed.

M.S. RAMACHANDRA RAO,J.

23rd June, 2015

Js.

^[1] AIR 2009 SC 1604