

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

CIVIL REVISION PETITION No.4150 of 2014

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ORDER:

This Revision is filed challenging the docket order dt.28-08-2014 and the consequential docket order dt.24-09-2014 in I.A.No.397 of 2014 in O.P.No.85 of 2010 of the Judge, Additional Family Court, Visakhapatnam.

2. The petitioner herein is 2nd respondent in the O.P.
The

1st respondent herein filed the O.P. to declare that she is the lawfully wedded wife of 2nd respondent and that petitioner is not the lawfully wedded wife of 2nd respondent.

3. Counter affidavit was filed opposing the claim in the O.P.

4. Issues were framed, trial commenced and 1st respondent examined P.W.1. Thereafter chief-examination affidavit of P.W.2 was filed. The matter was posted for cross-examination of P.W.2 on

02-07-2014. On that day, the learned counsel for 2nd respondent cross-examined P.W.2 and the petitioner's counsel could not do so on account of some health

problem. Therefore, he filed an application seeking time for cross-examination. But the Court below forfeited the turn of petitioner to cross-examine P.W.2.

5. I.A.No.397 of 2014 was filed by petitioner to recall P.W.2 for the purpose of cross-examination. On 28-08-2014 the Court below allowed the said application subject to payment of costs of Rs.1500/- to P.W.2 on the condition that on the date of his appearance, time would not be sought and further stating that otherwise, the petition would stand dismissed.

6. Thereafter the matter was called on 11-09-2014. On that day P.W.2 was not present to submit himself to cross-examination by counsel for petitioner. The case was adjourned to 18-09-2014. On that day also, P.W.2 was absent. Finally the matter was adjourned to 24-09-2014. On that day, P.W.2 attended the Court but time was sought on behalf of petitioner contending that her counsel went to Mumbai. This request for adjournment was rejected by the Court below stating that counsel for 1st respondent had alleged that threats were being given to P.W.2; that I.A. for adjournment was allowed on condition that petitioner would not ask for adjournment on the date of appearance of P.W.2; and since the counsel for petitioner is not there to cross-examine P.W.2 on 24-09-

2014, the right of petitioner to cross-examine P.W.2 is once again forfeited.

7. Challenging the same, this Revision is filed.

8. Heard Sri G.Venkata Reddy, learned counsel for petitioner and Sri K.Sudhakar, learned counsel for 1st respondent.

9. The learned counsel for petitioner contended that for 2 adjournments after the order was passed on 28-08-2014, the witness P.W.2 was not present even though the counsel for petitioner was ready to cross-examine him; on the third date i.e. 24-09-2014 the counsel was away from Visakhapatnam and had gone to Mumbai and therefore since he was not there, adjournment was sought on behalf of petitioner; but the Court below perversely forfeited the right of petitioner to cross-examine P.W.2; and this caused grave prejudice to petitioner. He contended that the Court below ought to have taken notice to the fact that on 2 days i.e. 11-09-2014 and 18-09-2014 after 28-08-2014, the witness was absent and also the fact that the cross-examination has to be done by the learned counsel for petitioner and the petitioner cannot be punished for the absence of the counsel.

10. The learned counsel for 1st respondent, on the other

hand, supported the order passed by the Court below and contended that in spite of giving opportunity to petitioner to cross-examine P.W.2, the said opportunity was not availed of and therefore the Court below was right in forfeiting the right of petitioner to cross-examine P.W.2.

11. The docket proceedings of the Court below filed along with the Revision indicate that on 28-08-2014 the Court below had allowed I.A.No.397 of 2014 on payment of costs of Rs.1500/- to be paid to witness on the date of his appearance and permitted the petitioner's counsel to cross-examine P.W.2 subject to the condition that time would not be sought for again.

12. Admittedly, on the next 2 dates of adjournment, the witness P.W.2 was not present. These dates are 11-09-2014 and 18-09-2014. On the following date i.e. on 24-09-2014 the learned counsel for petitioner had gone to Mumbai on personal work and request for adjournment was sought on that ground. The Court did not did not accede to that request and forfeited the right of petitioner to cross-examine P.W.2 on the ground that there was a condition imposed in the earlier order that time would not be sought again for cross-examination of P.W.2.

13. In my considered opinion, this approach of the Court below is not proper since admittedly the learned counsel

for petitioner was ready to cross-examine P.W.2 on 11-09-2014 and 18-09-2014, but the witness P.W.2 was absent on those 2 dates. This factor cannot be ignored by the Court below totally and it cannot forfeit the right of petitioner to cross-examine P.W.2 on 24-09-2014 when time was sought by her on the ground that her counsel had gone to Mumbai. Once the party engages a counsel, cross-examination has to be done by the counsel and the party cannot be made to suffer for the inability of the counsel to be present when the matter was listed for cross-examination of P.W.2.

14. Therefore, the orders of the Court below dt.24-09-2014 are set aside. The 1st respondent shall produce P.W.2 to face cross-examination by the learned counsel for petitioner on 28-07-2015 and on that day the petitioner shall ensure that her counsel cross-examines P.W.2 positively without fail. In default of this, this Revision shall stand dismissed.

15. The Civil Revision Petition is allowed with the above directions. No costs.

16. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 25-06-2015

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