

HON'BLE SRI JUSTICE S.V. BHATT

Civil Revision Petition No. 5497 of 2015

ORDER:

Heard Sri M.Sudheer Kumar, learned counsel for the petitioner and Sri N.Vijay, learned counsel for respondent.

2) The defendant in O.S. No.326 of 2006 in the Court of the Additional Judicial Magistrate of First Class, Kavali is the revision petitioner. The Revision is directed against the order dated 20.11.2015 in I.A. No.42 of 2015 in O.S. No.326 of 2006. The revision petitioner through I.A. No.42 of 2015 prayed for recall of PW.1 for further cross examination. The request for further cross examination was resisted by the plaintiff/ respondent. The affidavit filed by the revision petitioner alleges that senior advocate practising at Nellore was engaged to cross examine PW.1. On 16.10.2015 the senior advocate could not be present to cross examine PW.1.

3) According to the revision petitioner, the advocate who has cross examined PW.1 has not cross examined PW.1 in the manner in which had PW.1 been subjected to cross examination by senior advocate. However, according to plaintiff/ respondent, the cross examination was at length and the aspect on which further cross examination is required is not stated in the affidavit and petition is liable to be dismissed. The trial Court passed the following order:

“Having heard and perused the record, it reveals that the present petition is filed when case is posted for defendant’s evidence. Further, PW.1 was examined, in cross, at length, and an advocate-commissioner was also appointed before the trial. In such circumstances, without mentioning the reasons on what aspects PW.1 is to be further cross examined, this petition appears to be vague and is to be negatived.”

4) The learned trial Judge referred to three circumstances viz.,

- a) The application is filed when the suit is posted for defendant's evidence;
- b) PW.1 was cross examined at length; and
- c) Details of further cross examination of PW.1 suffer from vagueness and cannot be considered.

5) I prefer to take up the last reason first and examine the correctness. Prima facie, I am of the view details of further cross examination, if are disclosed, the element of surprise inherent in cross examination is lost and details of further cross examination can't be insisted upon.

6) Secondly, it is found that PW.1 was cross examined at length. Except stating PW.1 was cross examined at length, the impugned order provides no detail in this behalf. On the contrary, at the time of hearing, it is brought to the notice of this Court that the chief affidavit of PW.1 was filed in the month of September, 2015 and PW.1 was cross examined on 16.10.2015. On 17.10.2015, the application for supply of certified copy of PW.1's evidence was made, copy was made available on 27.10.2015 and the present application filed on 29.10.2015.

7) With reference to these dates, I am of the view that the revision petitioner has been diligent enough to pray for recalling PW.1, even before evidence on his side is commenced. This observation of trial Court is unsustainable.

8) It is matter of procedure that with the closure of the plaintiff's evidence, the next stage is defendant's evidence. Merely because the matter is posted for defendant's evidence, it does not mean that the trial Court cannot and could not have considered the

request of the revision petitioner for recalling PW.1 for further cross examination. The trial Court is expected to give sufficient reasons while considering the interlocutory applications as well. No effort is undertaken by the learned Magistrate to refer to the minimum details stated either in affidavit or counter affidavit. In the circumstances, the order impugned in the revision is set aside and PW.1 is recalled for further cross examination.

9) It is further brought to the notice of this Court by closing the evidence of revision petitioner, the suit is posted for arguments without recording the evidence of defendant, as the prayer for further cross examination of PW.1 was not allowed. It is, therefore, further directed that with the completion of further cross examination of PW.1, the revision petitioner/ defendant will adduce evidence on his behalf. The plaintiff and the defendant shall co-operate with the trial Court for expeditious disposal of suit.

10) With the above observation, the Civil Revision Petition is allowed. No order as to costs.

11) Miscellaneous petitions, if any, pending in this revision shall stand closed.

S.V. BHATT, J

Date: 23.12.2015

Note:CC by one week

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HON'BLE SRI JUSTICE S.V. BHATT

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