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HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.Nos.4433/2014, 4434/2014 & 910/2015

COMMON ORDER:

The respondent in O.P.No.20/ 2014, on the file of the Court of the Senior Civil Judge, Karimnagar is the petitioner in these Civil Revision Petitions.

2. Since these three revisions are interrelated and emanate out of one O.P, this court deems it apt and appropriate to dispose of these revisions by way of this common order.

3. Heard Sri K.S.Murthy, learned counsel for the petitioner and Sri Pochaiah Dorishetti, learned counsel for the respondent apart from perusing the material available before the Court.

4. C.R.P.No.4433 of 2014 is filed against the order dated 10.10.2014 passed in I.A.No.507 of 2014 filed by the respondent herein under Section 151 of the Code of Civil Procedure (hereinafter called 'the Code') to reopen his side evidence to enable him to mark the documents through him and to adduce further evidence.

5. C.R.P.No.4434 of 2014 is filed against the order dated 10-10-2014 passed in I.A.No.508 of 2014 filed by the respondent herein under Order 18 Rule 17 of the Code to recall PW.2 to receive the documents viz., (1) Depositions of PW.1 and PW.2 given in D.V.C.No.30 of 2010, on the file of JMFC, Godavarikhani, (2) List of gold ornaments dated 20.05.2003 and 27.05.2003, (3) matrimonial profile of the respondent in Divorce Matrimony.Com dated 14.07.2014 (Computer generated copy downloaded from the website), (4) Matrimonial profile of the respondent in Vishwabrahmin Matrimony.Com dated 18.06.2014 (computer generated copy downloaded from the website) and (5) Certified copy of complaint, F.I.R and Statements of LW.1 and 2 in Cr.No.71 of 2014 dated 09.03.2014 in P.S Jagtial of Karimnagar District.

6. C.R.P.No.910/2015 is filed against the order dated 10.10.2014 passed in I.A.506/2014 filed by the respondent herein under the provisions of Order 7 Rule 14 (3) of the Code to receive the documents.

7. Petitioner herein initially filed O.P.No.49 of 2010 against the respondent herein, on the file of the Court of the Senior Civil Judge, Peddapalli, for divorce under section 13 (1) (ia) of the Hindu Marriage Act. The respondent filed Transfer O.P.No.666 of 2013, on the file of the learned Principal District Judge, Karimnagar, seeking transfer of O.P.No.49 of 2010 from the Court of the Senior Civil Judge, Peddapalli to any other Court in Karimnagar district on the ground that the learned Senior Civil Judge was not giving proper opportunity to adduce evidence. The learned Principal District Judge, by way of an order dated 29-4-2014, ordered transfer of OP.No.49 of 2010 to the Court of the Senior Civil Judge, Karimnagar.

8. In the month of July, 2014 respondent herein filed the present I.A.Nos.506, 507 and 508 of 2014, asking for the reliefs as indicated *supra*. The petitioner herein resisted these applications by filing counters.

The learned Senior Civil Judge, Karimnagar, by way of orders dated 10-10-2014, allowed the said applications.

9. Calling in question the validity and the legal sustainability of the said orders passed by the Court of the Senior Civil Judge, Karimnagar, the present Civil Revision Petitions have been filed under Article 227 of the Constitution of India.

10. It is contended by the learned counsel for the petitioner that the orders under challenge in these revisions are erroneous, contrary to law and are opposed to the very spirit and object of the provisions of Order 7 Rule 14 (3) and Order 18 Rule 17 of the Code. It is further maintained by the learned counsel that the learned Senior Civil Judge did not take into consideration either the objections taken in the counters or the relevant provisions of law from proper Perspective. It is also the

contention of the learned counsel that in the absence of any proper reasons assigned in the affidavits filed in support of the applications, the learned Senior Civil Judge grossly erred in allowing the [Applications](#). It is also submitted that the reasons for not filing the proposed documents at the time of his evidence should also be stated in the affidavit and such reasons are conspicuously absent.

11. On the contrary, it is vehemently and strenuously contended by the learned counsel for the respondent that the orders which are impugned in the instant revisions are in accordance with the provisions of Order 7 Rule 14 (3) and Order 18 Rule 17 of the Code and there is no illegality nor any infirmity in the impugned orders, as such, the present revisions are not maintainable and the orders are not amenable for any interference of this Court under Article 227 of the Constitution of India. It is also the contention of the learned counsel for the respondent that the proposed documents are very much essential to prove the case of the respondent and in the event of allowing the orders to sustain, the same would never lead to any prejudice to the petitioner.

12. In the above background, now the issues which this Court is called upon to answer in the present revisions are:

1. Whether the orders impugned are in accordance with the provisions of Order 7 Rule 14 (3) and Order 18 Rule 17 of the Code of Civil Procedure?
2. Whether the questioned orders warrant any interference of this Court under Article 227 of the Constitution of India?

13. According to the affidavits filed in support of the applications, the reasons assigned for filing the applications are that at the time of earlier examination, respondent herein did not mark certain documents and he obtained the same recently and the same are very much important to prove his case and it is also necessary to examine one of his neighbours,

Sri Venkataramana and his examination is very much important for proper adjudication of the matter.

14. On the other hand, the objections of the petitioner herein are that the respondent herein did not mention any reason as to why he did not file the proposed documents at the time of his evidence and that he failed to reserve right to lead rebuttal evidence and the applications are not maintainable after closure of evidence in the absence of any valid reasons.

15. The issues in the present revisions are required to be examined in the light of the relevant provisions of law and the principles laid down by the Hon'ble Apex Court in ***K.K.VELUSAMY v. N.PALANSAMY***^[1] ***VADIRAJ NAGGAPPA VERNEKAR v. SHARADCHANDRA PRABHAKAR GOGATE***^[2] and this Court in ***C.RAMA MOHAN REDDY v. KUSETTY SESHAMMA AND OTHERS***^[3].

16. At this juncture, it would be necessary and appropriate to refer to the provisions of Order 7 Rule 14 and Order 18 Rule 17 of the Code of Civil Procedure and the same read as *infra*:

“Order VII Rule 14. Documents relied on in Plaint.- Production of document on which plaintiff sues or relies

(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such documents not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.

Order 18 Rule 17. Court may recall and examine witness.-

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.”

17. A bare reading of the above provisions of law makes it very much vivid that it is obligatory and incumbent on the part of the party to obtain the leave of the Court under Order 7 Rule 14 (3) of the Code to file a document at a later point of time in the event of the same not being filed along with the plaint. Rule 17 of Order 18 empowers and authorises the Court to recall any witness who has been examined already and put such questions as the Court thinks fit.

18. In order to have proper understanding of the scope and ambit of the above provisions of law, it is also necessary and expedient to refer to the principles and the parameters laid down by the Hon'ble Apex Court and this Court in the judgments referred to *supra*.

19. In ***K.K.VELUSAMY*** (*supra* 1), the Hon'ble Apex Court at paragraphs 9, 10, 15 to 19, held as follows:

“9. Order 18 Rule 17 of the Code enables the court, at any stage of a suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness under Order 18 Rule 17 can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. [Vide *Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate* : 2009 (4) SCC 410.

10. Order 18 Rule 17 of the Code is not a provision intended

to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo moto, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.

15. The learned Counsel for Respondent contended that once arguments are commenced, there could be no re-opening of evidence or recalling of any witness. This contention is raised by extending the convention that once arguments are concluded and the case is reserved for judgment, the court will not entertain any interlocutory application for any kind of relief. The need for the court to act in a manner to achieve the ends of justice (subject to the need to comply with the law) does not end when arguments are heard and judgment is reserved. If there is abuse of the process of the court, or if interests of justice require the court to do something or take note of something, the discretion to do those things does not disappear merely because the arguments are heard, either fully or partly. The convention that no application should be entertained once the trial or hearing is concluded and the case is reserved for judgment is a sound rule, but not a straitjacket formula. There can always be exceptions in exceptional or extra-ordinary circumstances, to meet the ends of justice and to prevent abuse of process of court, subject to the limitation recognized with reference to exercise of power under Section [151](#) of the Code. Be that as it may. In this case, the applications were made before the conclusion of the arguments.

16. Neither the trial court nor the High court considered the question whether it was a fit case for exercise of discretion under Section [151](#) or Order 18 Rule 17 of the Code. They have not considered whether the evidence sought to be produced would either assist in clarifying the evidence led on the issues or lead to a just and effective adjudication. Both the courts have mechanically dismissed the application only on the ground that the matter was already at the stage of final arguments and the application would have the effect of delaying the proceedings.

17. The Appellant - Defendant has taken a consistent stand in his reply notice, written statement and evidence that the agreement of sale was executed to secure a loan of Rs. 150,000, as the Respondent insisted upon execution and

registration of such agreement. If after the completion of recording of evidence, PW1 and PW2 had admitted during conversations that the amount paid was not advance towards sale price, but only a loan and the agreement of sale was obtained to secure the loan, that would be material evidence which came into existence subsequent to the recording of the depositions, having a bearing on the decision and will also clarify the evidence already led on the issues.

18. According to the Appellant, the said evidence came into existence only on 27.10.2008 and 31.10.2008, and he prepared the applications and filed them at the earliest, that is on 11.11.2008. As Defendant could not have produced this material earlier and if the said evidence, if found valid and admissible, would assist the court to consider the evidence in the correct perspective or to render justice, it was a fit case for exercising the discretion under Section [151](#) of the Code. The courts below have not applied their minds to the question whether such evidence will be relevant and whether the ends of justice require permission to let in such evidence. Therefore the order calls for interference.

19. We may add a word of caution. The power under Section [151](#) or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.”

20. In **VADIRAJ NAGGAPPA VERNEKAR** (*supra* 2), the Hon'ble Apex Court at paras 16 and 17, held as follows:

“16. In this regard, Mr. Narasimha also referred to another Single Bench decision of the Rajasthan High Court in Jodhpur Gums & Chemicals Pvt. Ltd. v. Punjab National Bank and Ors. , wherein while expressing the same views as expressed in the

above-mentioned matters, it was also observed that by allowing such an application for recall of a witness, no prejudice could be caused to the defendants as, apart from being compensated by costs, they would also have the opportunity to cross-examine the witness.

17. On the basis, of the above, Mr. Narasimha submitted that the orders of the learned Single Judge, as also the Division Bench, were passed on an erroneous understanding of the law and were liable to be set aside.”

21. In **C. RAMA MOHAN REDDY** (*supra* 3), this Court at paragraph 4, held as follows:

“4. In my opinion, reasons on which the applications filed by the petitioner are wholly unacceptable. Being the plaintiff, the responsibility lies on him to establish his case with reference to his own pleadings. He is bound to file all those documents, which advance his case and establish his pleadings. The petitioner cannot be permitted to fish out evidence from time to time and on installment basis depending upon what the defendant deposes. Order VII Rule [14\(1\)](#) of the Code of Civil Procedure, 1908, enjoins upon the plaintiff to enter all the documents, upon which he relies, in a list and shall produce them in the Court when the plaint is presented. Sub-Rule 3 of Rule 14 vests power in the Court to grant leave to file the documents at a later stage, but such a power has to be exercised only upon the plaintiff satisfying the Court that for convincing reasons those documents could not be filed earlier. It is not the pleaded case of the petitioner that the documents, which he sought to file, were not in his possession earlier. As noted above, his main plea is that since respondent No. 1 concentrated more on the boundaries, he wanted to strengthen his case by adducing further evidence. Such a reason cannot be accepted for permitting a party to file further evidence at a belated stage.”

22. As per the law laid down by the Hon’ble Apex Court in **K.K.VELUSAMY** (*supra* 1), the provisions of Section 151 of the Code cannot be routinely invoked for reopening evidence or recalling witnesses and the Courts should be doubly cautious while exercising inherent power and the powers conferred on the Courts under Section 151 and Order 18 Rule 17 is not intended to be used routinely and not merely for asking. In the said Judgment the Hon’ble Apex Court further held that the party applied for must show the reason for non-production

of the evidence earlier was for valid and sufficient reasons.

23. From the judgment reported in **C.RAMA MOHAN REDDY** (*supra* 3), this Court held that the reasons for non-filing of the proposed documents should be disclosed and order 7 Rule 14 (1) (3) obligates the party for assigning the reasons for not filing the documents earlier. It is also a settled proposition of law that the provisions of Order 18 Rule 17 are not intended to fill up omissions in the evidence of a witness who has already been examined, and on the other hand, the provisions are intended to clear any ambiguity that may arise during the course.

24. Even in the judgment cited on behalf of the respondent in **BHUPAN MAHTO v. RAM PRATAP MAHTO AND OTHERS** dated **06.02.01.2012**, the Patna High Court found fault with the order of the Court below that the Court below did not consider as to whether the documents marked as exhibits are relevant and necessary in the interest of justice.

25. In the present case, the affidavits filed in support of the applications are absolutely silent as to how the documents proposed to be filed are relevant for proving the allegations made against the respondent/petitioner herein. The valid, indispensable and required reasons are conspicuously absent and the reasons assigned in the affidavits filed in support of the applications are evidently not in consonance with the above principles, as such, it can be safely concluded that the learned Senior Civil Judge grossly went wrong in allowing the applications in view of failure of the respondent herein to satisfy the ingredients of the relevant provisions of law. In the affidavits filed by the respondent herein (petitioner before the Court below) in support of the present applications, it is averred that the proposed documents are necessary to prove his case and certain documents were not marked earlier and certain documents were obtained recently and it is necessary to examine one of his neighbours, namely, Sri Venkataramana in connection with many issues in his matrimonial

life with the petitioner herein. The said reasons undoubtedly do not satisfy the ingredients of the relevant provisions of law in view of the principles and parameters referred to *supra*.

26. The information available on record discloses that the respondent herein filed the present O.P initially on the file of the Court of the Senior Civil Judge, Peddapalli in the year 2010, and at his instance, vide orders dated 29-4-2014 in Transfer O.P No.666/2013, the said O.P was transferred by the learned Principal District Judge to the Court of the Senior Civil Judge, Karimnagar and it is numbered as O.P.No.20/2014. There is no dispute that the evidence on behalf of the respondent herein (petitioner in O.P) came to an end long back and another significant and vital aspect is that the scope of enquiry in the O.P filed by the respondent herein is limited to the extent as to whether the petitioner herein exhibited any cruelty towards the respondent herein during their association as wife and husband. The same cannot be allowed by permitting the parties to adduce irrelevant evidence which do not have bearing at all on the issue in the O.P filed for divorce on the ground of alleged cruelty.

27. Mere absence of any prejudice to the other side as observed by the learned Senior Civil Judge cannot be a ground to grant relief unless the party applying for makes out a case by establishing the existence of the necessary and relevant ingredients of the provisions of law under which the applications are made.

28. This court is also of the view that the learned Senior Civil Judge did neither properly refer to the specific objections taken in the counters nor answered and addressed the same in the light of the relevant provisions of law. Therefore, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the orders under revisions suffer from fundamental infirmity and jurisdictional error which warrant interference of this Court under Article 227 of the Constitution of India.

29. For the aforesaid reasons and having regard to the principles and

A.V.SESHA SAI, J

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HON'BLE SRI JUSTICE A.V.SESHA SAI

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C.R.P.Nos.4433/2014, 4434/2014 & 910/2015

Date :24.03.2015

grk

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HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.Nos.4433/2014, 4434/2014 & 910/2015

Date :24.03.2015

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Between:

M.Sailaja W/o. Rama Krishna,
Aged about 32 years,
R/o H.No.8-3-86,
Ganesh Nagar,
Markandeya Nagar Colony.

... Petitioner

And

M.Ramakrishna,
S/o Narsaiah,
Aged about 35 years,
R/o H.No.4-7-137,
Mudami Street No.9,
Peddapally, Karimnagar.

... Respondents

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[\[1\]](#) (2011) 11 SCC 275
[\[2\]](#) (2009) 4 SCC 410
[\[3\]](#) 2012 (4) ALD 96