

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

**C.R.P.No.455 of 2015**

**J U D G M E N T:**

The petitioner in this Revision is the plaintiff in the Suit, O.S.No. 711 of 2014. It filed an Interlocutory Application seeking an interim injunction. In support thereof, its Proprietor sworn to an affidavit and notices were issued thereon. The defendants in the Suit, who are the respondents to that Interlocutory Application, moved I.A.No.800 of 2014 in I.A.No.680 of 2014 for summoning the deponent of the affidavit for the purpose of cross-examination. That application was ordered directing the petitioner in I.A.No.680 of 2014 (plaintiff) to appear for the purpose of cross-examination in the said I.A. It is this order passed by the learned II Additional Senior Civil Judge, Kakinada on 21-01-2015, which is the subject matter of this Revision.

The learned counsel for the petitioner Sri E.V.V.S.Ravi Kumar would contend that at the interlocutory stage, the issues will be addressed and resolved basing upon the averments contained in the affidavit filed by the parties. Normally, for the purpose of cross-examination, the deponents of the affidavit will not be summoned to appear before the Court. If, for any valid reason, the Court desires to summon any witness / deponent of an affidavit to appear before it, such reasons must be adequate and fair and must be spelt out. In the instant case, no reasons whatsoever have been spelt out by the Court. The learned counsel would rely upon the Judgment rendered by this Court in ***C. SRINIVASA RAO AND ANOTHER v. K. MANOHAR RAO AND OTHERS***<sup>[1]</sup> and ***GARAPATI CHAMUNDESWARI @ CHALASANI CHAMUNDESWARI v. MALLAMPATI AMAR KUMAR***<sup>[2]</sup>.

It would be more appropriate, at this stage, to notice that Rule-2 of Order-19 of the Code of Civil Procedure sets out that the Court may,

at the instance of either party, order the attendance for cross-examination of the deponent of the affidavit filed in support of any application. Therefore, there is no bar for the Court to order for the appearance of the deponent of an affidavit for the purpose of cross-examination. But however, it is a settled principle that such insistence upon attendance of a deponent of an affidavit should be exercised with care and caution and the Court is also expected to record proper reasons for doing so. Otherwise, the interlocutory applications will be dragged on one pretext or the other instead of allowing them to be decided promptly by the Courts. At the interlocutory stage, generally, no final adjudication of the rights of the parties takes place. Therefore, a *prima facie* satisfaction is what enables the Court either to order or reject an interlocutory application. In these circumstances, when the Court insists upon a party to appear before it for the purpose of cross-examination, great care and caution is got to be employed and the reason why the Court is requiring the attendance of the deponent of an affidavit should be brought out in crisp and clear terms, otherwise the parties will take recourse to this method to ensure that at the interlocutory stage itself, the Suits will be prolonged for adequately long period.

To get over these difficulties, the Courts, while exercising the discretion for securing the attendance of a particular party / deponent of an affidavit, shall set out and record appropriate reasons in the order itself. As a matter of routine, the deponents of the affidavits shall not be summoned to the Court to appear for the purpose of cross-examination.

I am therefore, of the opinion that the exercise indulged in by the Court cannot be described as without any jurisdiction or power, but however, the ends of justice would be met adequately if I direct the learned II Additional Senior Civil Judge, Kakinada to allow cross-examination strictly confined to the contents of the affidavit filed in support of I.A.No.680 of 2014, but not in any manner expanding it.

With this, the Revision stands disposed of at the admission stage, but however, without costs.

Consequently, the miscellaneous petitions, if any, stand disposed of.

---

**NOOTY RAMAMOHANA  
RAO, J.**

mrk  
20.03.2015.

---

[\[1\]](#) AIR 1981 AP 406.

[\[2\]](#) LAWS (APH)-2009-3-82 LAP-2009-0-82.