

HONOURABLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No. 3142 OF 2013

DATED 5TH FEBRUARY, 2015.

BETWEEN

Manda Chendraiah

....Petitioner

And

Theerthala Ramulu and anor

...Respondents.

HONOURABLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No. 3142 OF 2013

ORDER:

The first defendant in O.S.No.12 of 2005 on the file of the Court of learned Junior Civil Judge, at Sulthanabad, Karimnagar District is the petitioner in the present Civil Revision Petition filed under Article 227 of the Constitution of India. This revision calls in question the order dated 01.04.2013 passed by the said Court, dismissing I.A.No.23 of 2013 filed by the petitioner herein under Order 18 Rule 17 Code of Civil Procedure, seeking to recall P.Ws.3 and 4 for the purpose of further cross-examination.

Heard Sri Ramachandar Rao Vemuganti, learned Counsel for the petitioner and Sri O.Manohar Reddy, learned Counsel for the respondents apart from perusing the material

available before the Court.

The first respondent herein instituted O.S.No.12 of 2005 against the petitioner herein and two others for perpetual injunction in respect of suit schedule property, admeasuring Ac.0.10 Guntas situated in Sy.No.732 of Odela village and Mandal, Karimangar District. In the said suit, the first defendant/petitioner herein filed the present application i.e. I.A. No. 23 of 2013 under Order 18 Rule 17 Code of Civil Procedure, praying the Court to permit recalling of P.Ws.3 and 4 for further cross-examination. Resisting the said application, the plaintiff/first respondent herein filed counter. The learned Junior Civil Judge, by order dated 01.04.2013, dismissed the said application filed by the petitioner herein.

Assailing the said order of the learned Junior Civil Judge, the present Civil Revision Petition has been filed under Article 227 of the Constitution of India.

It is contended by the learned Counsel for the petitioner that the order passed by the Court below is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order 18 Rule 17 Code of Civil Procedure. It is further contended by the learned Counsel for the petitioner that the Court below grossly erred in dismissing the application without properly appreciating the circumstances leading to filing of the application. It is further contended that had the contents of the affidavit filed in support of the application been considered, the order under revision could not have been emanated. To substantiate his submissions and contentions,

learned Counsel for the petitioner placed reliance on the judgments of this Court in *Sultan Saleh Bin Omer Vs. Vijayachand Sirimal* {1996(4) An.W.R. 22}, *Kolli Ranga Rao Vs. Kolli Varalakshmi Janani* {2011(4) ALT 252}, *Pantham Brahman Vs. Gollipalli Swaminaidu* {1997(2) ALT 652} and *Sayed Peerani Begum Vs. Hyderabad Secunderabad Nai Sena* {2012(2) ALT 715},

On the contrary, it is argued by the learned Counsel for the respondents that the Court below is perfectly right in dismissing the application filed by the petitioner as the said application does not meet the specific ingredients of Order 18 Rule 17 Code of Civil Procedure. It is further contended that there is no illegality nor jurisdictional error in the order impugned and in absence of the same, present revision is not maintainable under Article 227 of the Constitution of India. The learned Counsel for the respondents, in support of his submissions and contentions, placed reliance on the judgments of the Honourable Apex Court in *Vadiraj Nagappa Vernekar Vs. Sharad Chand Prabhakar Gogate* {AIR 2009 SC 1604} and *K.K. Velusamy Vs. N.Palanisamy* {(2011)11 SCC 275}.

In the above background, now the issue that emerges for consideration is whether the order under challenge is in accordance with the provisions under Order 18 Rule 17 Code of Civil Procedure and whether the same requires any correction by this Court under Article 227 of the Constitution of India.

The material available before this Court candidly discloses that the respondent herein instituted the suit in

O.S.No.12 of 2005 for perpetual injunction against the petitioner herein and two others. In the said suit, the first defendant/petitioner herein filed the present application under Order 18 Rule 17 CPC, requesting the Court below to recall P.Ws.3 and 4 for the purpose of cross examination.

At this juncture, it is appropriate to refer to the relevant provision of law, i.e. Order 18 Rule 17 CPC which reads as follows:

“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.”

There is no dispute with regard to the fact that the Court is empowered to recall any witness for the purpose of examination at any stage of the suit. But this power is required to be exercised subject to certain restrictions and conditions. In the affidavit filed in support of the present application in I.A.No.23 of 2013, the first defendant/ petitioner herein stated that before commencement of defendants’ evidence, on verification, he came to know that certain important questions were omitted to be posed to P.Ws.3 and 4 while cross-examining them due to oversight and lack of timely remembrance power. Resisting the same, a counter affidavit was filed wherein the plaintiff/first respondent herein stated that the evidence of plaintiffs was closed long back and when the matter is coming up for evidence

of defendants, the present application was filed which is not maintainable.

In this connection, it is appropriate to refer to the principles laid down by the Honourable Apex Court as well as this Court in the decisions cited by the learned Counsel for the petitioner and learned Counsel for the respondents.

In the case of Sultan Saleh Bin Omer (*supra*), it was held by this Court as under:

“ The Court may at any stage of a suit re-call 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.

A close reading of this Rule makes it obvious that the right under that Rule to put questions at any stage of a suit or re-call any witness for that purpose, is given to the Court. The Court can put questions to the witness re-called, and no cross-examination is ordinarily allowed upon the answers to the questions put by the Judge without leave. The right to act under this Rule is not restricted to the Court on its own motion, but may be exercised at the instance of a party. It cannot therefore be said that an opportunity to a party to re-call any witness for the purpose of examining, cross-examining or re-examining is governed by Order 18 Rule 17 Civil Procedure Code. I, therefore, hold that if circumstances warrant, an opportunity to a party to re-call a witness for examining, cross-examining or re-examining can be granted by a Court in the exercise of its inherent jurisdiction under Section 151 Civil procedure Code.”

In the case of Kolli Ranga Rao (*supra*), this Court observed as follows:

“The learned counsel for the respondent also could not show any provision to file an application to reopen the

case. When an application has been filed to adduce further evidence, it is deemed that a request is made to reopen the matter and there is no need to file a separate application to reopen the case.”

In the case of Pantham Brahman (supra), this Court held as follows:

“It is to be seen, Courts are entitled to recall a witness who has already been examined, at any stage of the suit, for putting certain questions under the above provision. The words used in this provision are to be necessarily construed to say the power can be exercised by the Court suo motu as also at the instance of either party. The legislature never intended to say the Courts alone are to exercise suo motu powers to recall a witness at any stage of the proceedings. No doubt, this is a suo motu power vested in the Courts under the Civil Procedure Code for exercising such power in an appropriate situation, however, this power has to be construed to say that the Court on its own or at the instance of either party permit recalling of a witness in a given set of circumstances. It all depends upon the set of circumstances and the Court shall prima facie satisfy as to the ordering of recalling of a witness who has already been examined. If once the Court is satisfied, it is open to the Court to act upon such an application also when filed before it seeking recalling of a witness by either party.”

In the case of Sayeda Peerani Begum, this Court held as follows:

“The petition was not dismissed on the ground of abnormal delay and no sufficient cause has been shown under Order XVIII Rule 17. Under Order XVIII Rule 17, the Court may at any stage of the suit recall any witness who has been examined and may put such question to him as the Court thinks fit. The said application has been rightly filed under order 18 Rule 17 read with Section 151, showing sufficient cause and when the subject matter of the suit is related to the immovable property for declaration of the title, it is not desirable to shut the parties from adducing the evidence. The Court below failed to exercise its jurisdiction in not allowing the petitioners to recall PW.1 for the purpose of cross-

examination. The Court below failed to exercise its jurisdiction properly and dismissed the application without any justification.”

Coming to the judgments cited by the learned Counsel for the respondents in the case of Vadairaj Naggappa Vernekar, the Honourable Apex Court held as under:

“In our view, though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

As indicated by the learned Single Judge, the evidence now being sought to be introduced by recalling the witness in question, was available at the time when the affidavit of evidence of the witness was prepared and affirmed. It is not as if certain new facts have been discovered subsequently which were not within the knowledge of the applicant when the affidavit evidence was prepared. In the instant case, Sadanand Shet was shown to have been actively involved in the acquisition of the flat in question and therefore had knowledge of all the transactions involving such acquisition. It is obvious that only after cross-examination of the witness that certain apses in his evidence came to be noticed which impelled the appellant to file the application under Order 18 Rule 17 CPC. Such a course of action which arises out of the fact situation in this case does not make out a case for recall of a witness after his examination has been completed. The power under the provisions of order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and reexamination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.”

In the case of S.K.K.Velusamy (Supra) the Honourable Apex Court held as follows:

“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].

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.

There is no specific provision in the Code enabling the parties to re-open the evidence for the purpose of further examination-in-chief or cross-examination. Section 151 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the Code to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court. In the absence of any provision providing for re-opening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required by

the court, the inherent power under section 151 of the Code, subject to its limitations, can be invoked in appropriate cases to re- open the evidence and/or recall witnesses for further examination. This inherent power of the court is not affected by the express power conferred upon the court under Order 18 Rule 17 of the Code to recall any witness to enable the court to put such question to elicit any clarifications.”

The principles laid down in the above referred judgments clearly show that the Court is empowered to recall witness at any stage of suit only when the party applying for fulfills the necessary ingredients of the provisions of Order 18 Rule 17 CPC. In the instant case, except stating that on verification the petitioner/first defendant came to know that certain important questions were omitted to be posed to P.Ws.3 and 4 while cross-examining them due to over sight and lack of timely remembrance power, the petitioner did not state any other reason in support of his case. This, in the definite opinion of the Court, by no stretch of imagination, cannot be a ground for the purpose of reopening the evidence and recall witnesses already examined. As per the judgments of the Honourable Apex Court in K.K.Velusamy (referred supra), the power available to the Court under Provisions of Order 18 Rule 17 CPC is discretionary and should be sparingly used in appropriate cases to enable the Court to clarify any doubts which may have in regard to the evidence led by the parties and the said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. Further, the Honourable Apex Court in the case of Vadiraj Naggappa Vernekar (referred supra) clarified that Order 18 Rule 17 CPC is

primarily a provision to clarify any issue or doubt. A perusal of the order under revision clearly discloses that the Court below assigned cogent and convincing reasons to arrive at a conclusion. It is a well settled principle of law that unless the order impugned suffers from any foundational defect or fundamental infirmity or jurisdictional error, jurisdiction of this Court under Article 227 of the Constitution of India is not available. In the present case, this Court finds no such jurisdictional error which enables this Court to exercise power under Article 227 of the Constitution of India.

For the aforesaid reasons, the Civil Revision Petition is dismissed.

Miscellaneous petitions pending consideration if any in the Civil Revision Petition shall stand closed in consequence. No order as to costs.

JUSTICE A.V. SESA SAI

DATED 5TH FEBRUARY, 2015.
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