

APPLICATION NOS.5209 to 5211 of 2013
IN
C.S.No.876 of 2007

PUSHPA SATHYANARAYANA, J

The above applications have been taken out by the applicants/ plaintiffs to reopen the evidence of P.W.1; to recall the evidence of P.W.1; and to permit the applicants / plaintiffs to file additional documents and receive the same in the above suit in C.S.No.876 of 2007.

2. The suit is filed for recovery of 33,820 grams of gold from the defendants together with interest etc. In the above suit, the second plaintiff had examined himself as P.W.1 and one P.W.2, who was familiar with the trade practice in the entrustment and manufacture of gold, was examined as P.W.2 and D.W.1 has also been examined and cross examined. It is stated that during the pendency of the proceedings certain Special Leave Petitions were filed before the Hon'ble Supreme Court against O.S.A.No.407 and 408 of 2007. Contempt petitions were also filed in the Special Leave Petitions for disobedience of the orders of the Apex Court. It is averred in the affidavit filed in support of the application that proceedings in the form of documents,

have been marked through P.W.1. Hence, the applications are filed for reopen, recall and mark the documents. In the application filed, the applicants have enlisted about 42 documents. Excepting the fact that these documents have to be marked, no other reason or connectivity has been averred in the petition.

3. The applications were resisted by the fourth respondent stating that similar applications were filed to reopen and recall in Application Nos.4859, 4860 and 4861 of 2011. This Court allowed the application in A.No.4859 of 2011 on 08.11.2011 only to reopen P.W.1 witness and other applications were dismissed. For further examination of P.W.1, it was posted on 18.01.2012. Thereafter, the defendants witnesses were examined. The plaintiffs are deliberately filing these kind of applications, only to harass the defendants. So stating the respondents / defendants pleaded for dismissal of the applications.

4. It is well settled principle that Order XVIII Rule 17 of the Code of Civil Procedure is not intended to be used as a matter of routine for the mere asking. Only, when an application is found to be *bona fide* and the evidence

that may be marked through the recalled witness, assists the Court to clarify the evidence on the issues, it is desirable for the Court to recall the witness.

5. Admittedly, in this case, excepting three of the documents which were prior to the filing of the suit, the rest of them were subsequent to the suit. No reason has been assigned in the affidavit as to why the documents prior to the filing of the suit were not marked though the plaintiff was in the box once on his own and on the second time when he was recalled. With respect to the other documents, they are all subsequent to the filing of the suit and may not have any weightage. Even, otherwise, those documents were available even when the plaintiff was recalled on the earlier occasion. The applicant has not stated in the affidavit whether the documents produced would either assist in clarifying the evidence led on the issues or lead to a just effective adjudication. No doubt, under Order XVIII Rule 17, the Court has got power to recall witness either on its own motion or an application filed by any of the parties to the suit requesting the Court to clarify the doubt that are raised by the parties. Nevertheless, it is settled position that such a power is not intended to use to fill up lacuna in the evidence. It is only an enabling provision for the Court to clarify any issue or doubt by recalling any witness

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either suo motu or at the request of any party. As suggested by the Hon'ble Supreme Court recording evidence should continuous, followed by arguments without gap.

6. As the suit itself is of the year 2007 and the parties went into trial in the year 2011, the applicants have unnecessarily brought the trial to halt by filing the frivolous applications. Hence, there is no merits in the case and the applications are dismissed.

13.07.2016

Index: Yes/No

Internet: Yes/No

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