

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NOs.3460 & 3279 OF 2016

COMMON ORDER:

These two revision petitions are filed by the petitioner/defendant in I.A.No.7 of 2016 in O.S.No.513 of 2015 and I.A.No.8 of 2016 in O.S.No.514 of 2016 dated 12.02.2016 granting permission to cross-examine the witness produced by the plaintiff with certain riders, while declining permission to adduce rebuttal evidence.

The petitioner/defendant filed IAs under Order IX Rule 7 read with Section 151 of C.P.C to grant permission to participate in the Trial by permitting him to cross-examine the respondent/plaintiff and also to adduce rebuttal evidence, raising several contentions and admitted that I.A.41 of 2013 was allowed by the Trial Court, but this Court dismissed the I.A. by allowing the C.R.P and the Apex Court confirmed the order of this Court in S.L.P.No.34820 of 2015.

The respondent filed counter contending that the petitioner is not eligible to participate in the proceedings, in view of the order passed by this Court in C.R.P No.466 of 2014 that he is not entitled to adduce evidence in the absence of pleadings and the Trial Court framed point for consideration and answered the same as follows:

“In the result, the petition is partly allowed. The defendant is not entitled to lead any evidence on his own and he shall not be permitted to cross examine the witnesses of the plaintiff to travel beyond and to convert the same virtually in to the presentation to defendant case either directly or in the form of suggestion put to the plaintiff witnesses. The prayer in respect of adducing rebuttal evidence is dismissed. However, both parties are directed to bear their own costs.”

The petitioner dissatisfied with the permission granted by the Trial Court, filed the present revision on various grounds and during hearing, learned counsel mainly contended that according to Section 146 of Indian Evidence Act, when a witness is being cross-examined, he may, in addition to the questions herein before referred to, be asked any questions which tend to test his veracity and to discover who he is and what is his position in life or to shake his credit, by injuring his character, therefore, he is entitled to cross-examine the witness on all the aspects under Section 146 and as per the judgment of the Apex Court in **Modula India v. Kamakshya singh Deo**¹ and prayed to grant permission to cross-examine the witness in all respects deleting the rider annexed to the permission granted by the Trial Court.

Whereas, the party in person Sri B.V. Rama Narasimha Reddy while supporting the order passed by the Trial Court drawn the attention of this Court to the order in C.R.P.No.466 & 467 of 2014 dated 23.09.2015, wherein, this Court in paragraph 16 observed that it is a clear case of negligence of the respondent and

¹ (1988) 4 Supreme Court Cases 619

the respondent cannot be allowed to take advantage of its own wrong and plead that some injustice would be caused if opportunity is denied to the respondent to file written statements and contest the suit. Based on this observation, he contended that an opportunity was denied even to cross examine the witness by this Court in the order referred supra, which is confirmed by the Apex Court in S.L.P. In those circumstances, according permission even to cross-examine the witness is against the purport of the order and prayed to dismiss both the revisions.

Admittedly, the revision petitioner remained *exparte* before the Trial Court and filed application under Order IX Rule 7 which was allowed by the Trial Court on 22.02.2012, and the same was challenged before this Court in revision and the revision was allowed on 23.09.2015 setting aside the order passed by the Trial Court and the matter was carried to the Supreme Court, which confirmed the order at the stage of admission. Thus, the order passed by this Court in C.R.P.No.466 of 2014 on 23.09.2015 has attained finality. Therefore, the position of the petitioner was restored to as on 21.12.2012 before allowing the petition filed under Order IX Rule 7 of C.P.C. Thus, as on the date, there is no pleading on behalf of the defendant in the suit, but sought for permission to cross-examine the witness in all respects within the limits prescribed under Section 146 of the Indian Evidence Act. But the Trial Court permitted the petitioner to cross-examine the witness to a limited extent, as indicated in the earlier paragraphs.

The only endeavour of the petitioner is that, he is entitled to cross-examine the witness subject to limitations contained under Section 146 of the Indian Evidence Act. No doubt, the petitioner is entitled to cross-examine the witness, but subject to other sections limitations imposed under Section 148, 149, 150 & 151 of Indian Evidence Act. However, the reason for annexing such rider by the Trial Court is that, there is every possibility of putting certain questions, almost suggesting the defence of the defendant without any pleadings. In normal course of events, in the absence of any pleadings, evidence if any adduced, cannot be looked into and in any such case, putting questions without any defence by filing written statement would amount to introducing some material on record. But the petitioner is entitled to put questions to the witness only to the extent within the limitation prescribed under Section 146 Clause 1, 2 & 3 subject to Sections 149, 150 & 151 of Indian Evidence Act and he is entitled to put his independent case without any pleadings in the cross-examination by way of suggestion or by direct questions to the witness.

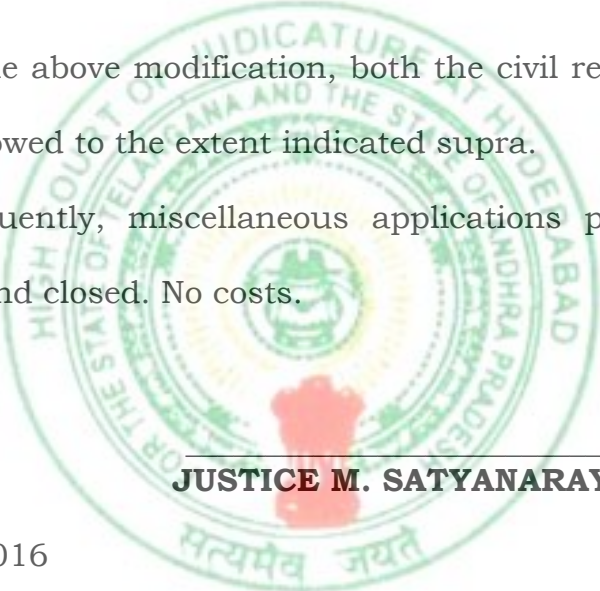
The respondent as party in person based on paragraph 16 of the order in C.R.P.No. 466 of 2014 contended that the petitioner is not entitled to even cross-examine the witness, since he was not allowed to contest the suit. In the last sentence of the order in paragraph 16 in C.R.P., is only an observation, but not a finding. Even otherwise, when the Trial Court granted permission allowing the petition partly, the respondent did not challenge the order. In

the absence of any such revision, questioning the order passed by the Trial Court independently on the petition cannot be set at naught on the basis of the observations made in the last sentence of paragraph 16 of the order in C.R.P No.466 of 2014

Hence, the petitioner is permitted to cross-examine the witness produced by the plaintiff subject to limitations contained under Section 146 of Indian Evidence Act and Sections 149, 150 & 151 of the Indian Evidence Act and further directed not to put any leading question to the witness for establishing the defence of the defendant.

With the above modification, both the civil revision petitions are partly allowed to the extent indicated supra.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.



JUSTICE M. SATYANARAYANA MURTHY

Date:09.09.2016

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