

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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Civil Revision Petition No.2275 of 2016

ORDER:

This revision, under Article 227 of the Constitution of India, is preferred against the order passed by the V Senior Civil Judge, Hyderabad in I.A.No.81 of 2016 in O.S.No.1087 of 2011 dated 29.02.2016.

The respondent herein filed the said I.A, under Order 18 Rule 17 CPC, seeking recall of PW.1 for further cross-examination on the ground that, though he was cross-examined on 19.01.2016, due to oversight/mistake, his counsel did not elicit the admissions of PW.1 in his deposition in the earlier case in R.C.No.398 of 2011 pertaining to his admitted signatures on some rent receipts; and, as such, recalling of PW.1 was necessary. A counter was filed opposing the application. Before the Court below the Learned Counsel for the petitioner had placed reliance on

Nagumothu Sriharinath v. Nagumothu Vani^[1] to contend that recalling of a witness could not be allowed on the ground that, at the time of earlier cross-examination, the counsel had not been properly briefed by the party. The Court below noted the submission of the Learned Counsel for the respondent herein that the application was filed on the very next day on which the suit was posted for further evidence of the plaintiff; and in order to put some questions to PW.1 pertaining to the admissions made by him in R.C.No.398 of 2011 relating to his signatures, which were admitted by him on some rent receipts, recalling of PW.1 was necessary.

In the order under revision, the Court below observed that the deposition of P.W.1 as R.W.1 in R.C.No.398 of 2011 had not been marked, but certain rent receipts were confronted to him, during the course of his cross-examination on 19.01.2016, in which he stated that they do not bear his signatures; he had also admitted that he gave evidence in R.C.No.398 of 2011; the petition was filed on the very next day after closure of cross-examination of PW.1; and it was only for the limited purpose of confronting him about the receipts, which were admitted by him and marked in R.C.No.398 of 2011, that the petitioner had sought recalling of the witness.

The Court below allowed the application on payment of costs of Rs.500/-.

Sri Damodar Mundra, Learned Counsel for the petitioner, would contend that it was not open to the Court below to recall a witness for further cross-examination on the ground that the counsel for the other side had not put certain questions to him earlier; the petitioner had suffered prejudice thereby; and therefore the order of the Court below necessitated interference.

As noted hereinabove, the petition was allowed by the Court below on payment of costs of Rs.500/- which the petitioner has, admittedly, received. The I.A. was filed on the very next day after the evidence of PW.1 was closed, and when the matter was coming up for further evidence of the plaintiff. It is not as if the counsel for the respondent herein had sought to fill-up any gaps after the other witness had been examined, or to protract proceedings. The jurisdiction, which this Court exercises under Article 227 of the Constitution of India, is supervisory and not appellate. Save patent illegality in the order under revision, or the petitioner suffering substantial injustice thereby, no interference is called for. As the application for recalling PW.1 was filed on the very next day after the evidence of PW.1 was closed, that too on payment of costs of Rs.500/-, neither can the discretion exercised by the Court below be said to be patently illegal nor can the petitioner be said to have suffered substantial injustice thereby. I see no reason, therefore, to exercise discretion under Article 227 of the Constitution of India to interfere with the order under revision. The Court below shall, however, ensure that the proceedings are not needlessly dragged on; and that PW.1 is cross-examined on the date fixed by it.

The Civil Revision Petition fails and is, accordingly, dismissed. The Miscellaneous Petitions, if any pending, shall also stand dismissed. No costs.

(RAMESH RANGANATHAN, J)

Date:10.06.2016.

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