

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P. No. 2046 OF 2016

ORDER :

This Civil Revision Petition is filed against order dated 14.03.2016 in I.A.No.206 of 2016 in I.A.No.3812 of 2015 in O.S.No.88 of 2015, wherein the Court below dismissed the application filed by the petitioner/4th defendant in the suit under Order 19 Rule 2 of CPC to direct the 1st respondent/1st defendant to appear before the court to cross-examine her to elicit the truth in the contents of her affidavit filed in I.A.No.3812 of 2015.

2. For the sake of convenience, the parties hereinafter will be referred to as arrayed in the interlocutory application.

It is the case of the petitioner that he is the 4th defendant in the main suit and defendants 1 and 3 in the main suit filed a petition in I.A.No.3812 of 2015 praying the Court to direct the defendants 5 to 7, who are tenants to pay rents to the 1st defendant in respect of the petition schedule property or to deposit the rents into the Court to withdraw the same by the 1st defendant. In order to ascertain the truth, cross-examination of 1st defendant is very much necessary. Hence, the petition.

3. The 1st respondent/plaintiff filed counter denying the averments in the affidavit filed in support of the petition stating that the petitioner is not having good terms with his parents and sisters for the last four years and that he is not aware of the health condition of the 2nd respondent i.e., 1st defendant in the suit. It is also stated that Order 19 Rule 2 is not applicable in respect of Interlocutory Applications and examination of deponent arises only in cases where third party affidavits are filed. It is also stated that the cross-examination of 2nd respondent/1st defendant at this stage is not

permissible and that the 2nd respondent has got only share in the plaint schedule properties along with other respondents.

4. Heard learned counsel for the petitioner. None appeared on behalf of the respondents.

5. Learned counsel for the petitioner submits that the 2nd respondent is not suffering with any heart disease, as such, there is no need for depositing the rents into the Court and the Court below should have allowed the application to cross-examine the 2nd respondent/1st defendant, but erroneously dismissed the same on the ground that Order 19 Rule 2 of CPC has no application to the present case and it is only applicable when third party affidavits are filed. He would further contend that cross-examination can be permitted in respect of the affidavits filed by parties to proceedings also. In support of his contentions, he relied on the judgments reported in **Gampa Sai Ravi Kiran v. Bonda Rama Lakshmi and others**^[1], **Nadella Estates Pvt. Ltd. Hyderabad v. Prema Ravindranath and others**^[2], **Shetty Chandra Shekar and others v. Neeti Ramulu and others**^[3] and **Ali Bin Aifan v. State**^[4].

6. The provision of law under which I.A.No.206 of 2016 is filed is under Order XIX Rule 2 CPC, which reads as under:

“Power to order attendance of deponent for cross-examination:

- (1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.
- (2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court or the Court otherwise directs.”

In **Shetty Chandra Shekar and others v. Neeti Ramulu and others** (*supra*), His Lordship Hon'ble Sri Justice N.V.Ramana (as he then was) while dealing with the provision under Order XIX Rule 2 of CPC held as follows:

“9. A bare perusal of the provisions of Order XIX, Rule 2, would make it clear that the question of ordering attendance for cross-examination of the deponent arises only in cases where the third party affidavits are filed in support of the cases of the respective parties. The language employed in the provision would not indicate conferring of any power on the Court to call a person swearing the affidavit filed in support of the petition, for cross-examination. The affidavit filed in support of the petition shall not be treated, as an affidavit filed by way of evidence, and in this context, it would be relevant, if a reference is made to the provisions of [Section 3](#) of the Indian Evidence Act, 1872, which defines "evidence" to mean and include all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence. In the present case, the respondents-defendants filed the petition under Order XIX, Rule 2 C.P.C. to direct the petitioner-plaintiff No. 1 to come to the Court for the purpose of cross-examination. The question of applicability of the provisions of Order XIX, Rule 2 C.P.C. would arise only in cases where an affidavit was filed in support of the cases of the respective parties i.e. either on behalf of the plaintiff or on behalf of the defendant, by way of evidence, but certainly not an affidavit filed in support of a petition. Since the affidavit filed in support of a petition cannot be treated as evidence, the present petition filed by the respondents-defendants under Order XIX, Rule 2 C.P.C. seeking to summon the deponent of the affidavit filed in support of the petition for temporary injunction, was not maintainable, and more so when it is not the case of the respondents-defendants that they intended to summon petitioner-plaintiff No. 1 because he had sworn to the affidavit by way of evidence to support the case of the plaintiffs. The law is well settled that when affidavits are filed in a proceeding under Order XXXIX, Rule 1 C.P.C. or any other proceedings, and in case the Court entertains a doubt, with regard to the identity of the person or persons who gave the affidavit, then it has the power and discretion to order the attendance of the deponent of the affidavit, for cross-examination so as to come to a just conclusion, to determine such petition. In such situations, the order passed by the Court below to summon the deponent for cross-examination cannot be faulted and such orders, can neither be said to be illegal nor beyond the competence of the Court.

10. In the above view of the matter, it has to be held that the present application filed by the respondents-defendants under Order XIX Rule 2 C.P.C. is not maintainable, and the Court below was not justified in ordering the present application holding that the respondents-defendants counsel is entitled to cross-examine petitioner-plaintiff No. 1 who swore to the affidavit filed in support of the petition for grant of temporary injunction, and more so when the present application, does not fall within the ambit and scope of Order XIX Rule 2 C.P.C.”

7. In **Gampa Sai Ravi Kiran v. Bonda Rama Lakshmi and others** (**supra**), with due respect, though the learned Single Judge has

referred to the judgment of this Court in **Shetty Chandra Shekar and others v. Neeti Ramulu and others (supra)**, but without considering the effect of the said judgment, allowed the application for cross-examination of deponent stating that it is a valuable right conferred on the parties. The learned Single Judge has not considered the effect of the aforesaid judgment, which was rendered after taking into account Section 3 of the Indian Evidence Act, which defines evidence.

8. In **Nadella Estates Pvt. Ltd. Hyderabad v. Prema Ravindranath and others (supra)**, with due respect, the learned Single Judge, though referred to the judgment of this Court in **Shetty Chandra Shekar and others v. Neeti Ramulu and others (supra)**, but has not considered the effect of the same and also has not considered the effect of Section 3 of Evidence Act. However, on merits, dismissed the applications filed under Order XIX Rule 2 CPC. In both the decisions, though reference is made to about the judgment of this Court in **Shetty Chandra Shekar and others v. Neeti Ramulu and others (supra)**, but has not taken into account the effect of Section 3 of the Indian Evidence Act and in **Ali Bin Aifan's case (supra)** also the learned Judge has not considered Section 3 of the Evidence Act, as such, in my opinion, the decisions rendered in **Gampa Sai Ravi Kiran v. Bonda Rama Lakshmi and others (supra)** and **Nadella Estates Pvt. Ltd. Hyderabad v. Prema Ravindranath and others (supra)** and **Ali Bin Aifan (supra)** are *per incuriam*, as per the judgment of Hon'ble Supreme Court in **Fuerst Day Lawson Ltd., v. Jindal Exports Limited**^[5].

9. The Court below by relying on the judgment reported in **Shetty Chandra Shekar and others v. Neeti Ramulu and others (supra)** dismissed the application filed by the petitioner on the ground that the deponents of third party affidavits filed in support of plaintiff or defendant can be called for cross-examination but not the affidavit filed by either the plaintiff or the defendant to the proceedings.

The Court below also relied on the judgment reported in the

case of **Smt. Sudha and another v. Manmohan and others**^[6], wherein it is held that the request for cross examination of the defendant cannot be allowed if such request could be to protract and delay the proceedings under the main suit. The Court below has rightly relied on the judgment in **Shetty Chandra Sheker's case** and came to the conclusion that the application under Order XIX Rule 2 CPC is not maintainable in respect of the affidavits filed by parties to proceedings and it will apply to the affidavits filed by third parties.

In view of above facts and circumstances, I do not see any reason to interfere with the order of the Court below.

Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this CRP, shall stand dismissed.

A.RAJASHEKER REDDY, J

03.06.2016.

Note: LR copy to be marked.

B/o.kvs

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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[\[1\]](#) 2013 (2) ALT 784
[\[2\]](#) 2015 (4) ALT 665
[\[3\]](#) 2008 (2) ALT 463
[\[4\]](#) 1983 (1) ALT 39= AIR 1983 AP 114
[\[5\]](#) 2001 (6) SCC 356=AIR 2001 SC 2293

[\[6\]](#) AIR 1996 Raj 59