

**HON'BLE THE ACTING CHIEF JUSTICE SRI RAMESH RANGANATHAN**

**Civil Revision Petition No.4215 of 2016**

**ORDER:**

This revision, under Article 227 of the Constitution of India, is preferred against the order passed by the Additional Judge-cum-VI Senior Civil Judge, City Small Causes Court, Hyderabad in I.A.No.344 of 2016 in O.S.No.416 of 2013 dated 02.08.2016. A common order was passed by the Court below in I.A.Nos.344 and 345 of 2016 in O.S.No.416 of 2013. These two applications were filed by the respondent-plaintiff requesting the Court below to reopen the matter and recall DW.1 for cross-examination, as the evidence of D.W-1 was closed on 12.07.2016.

In the order under revision, the Court below observed that the evidence on behalf of the applicant (respondent herein) was concluded on 31.08.2015; the matter was coming up for the evidence of the defendant on 14.09.2015; the defendant had filed the affidavit of DW.1 on 05.01.2016; DW.1 was examined on 11.03.2016; documents were marked through him on 02.06.2016; the defendant took nearly ten months to examine one witness and produce documents; no doubt, when the matter was posted for cross-examination of DW.1 on five different dates i.e 06<sup>th</sup>, 14<sup>th</sup> and 22<sup>nd</sup> June, 2016 and on 08<sup>th</sup> and 12<sup>th</sup> July, 2016, the applicant-plaintiff was absent, and there was no representation on his behalf; consequently, cross-examination of DW.1 was recorded as nil, and the matter was

posted for arguments on 12.07.2016; immediately, on 19.07.2016, these two applications were filed; and, having regard to the fact that DW.1 was not cross-examined at all, an opportunity should be granted to the applicant to enable the matter to be decided on merits. The Court below noted the submission, urged on behalf of the applicant, that both he and his Counsel could not attend the Court due to ill-health. The Court below was of the view that the said contention need not be disbelieved, no prejudice would be caused if the applicant was given an opportunity to cross-examine the witness, and he could be compensated by costs for being not cross-examined. The application was allowed on payment of costs of Rs.200/-.

The contention urged on behalf of the revision petitioner, in this revision proceedings, is that, despite several opportunities being granted by the Court below, DW.1 was not cross-examined; and therefore the Court below was not justified in reopening the matter for DW.1 to be cross-examined merely on payment of costs of Rs.200/-. As noted by the Court below, in the order under revision, the revision petitioner herein took nearly ten months to examine DW.1, and to mark documents on his behalf. While it is no doubt true that, despite five adjournments, the respondent did not cross-examine DW.1, the fact remains that all these five adjournments were within a span of two months. In proceedings under Article 227 of the Constitution of India, this Court would, ordinarily, not interfere with the discretion exercised by the Court below, save in cases

where the order under revision suffers from a patent illegality, or substantial injustice is caused thereby. The order, passed by the Court below, does not suffer from any such infirmity. I see no reason, therefore, to exercise discretion under Article 227 of the Constitution of India to interfere with the order under revision.

The Civil Revision Petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

Date:02.09.2016.

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**RAMESH RANGANATHAN, ACJ.**

