

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITIN Nos.3783 and 3786 of 2015

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COMMON ORDER:

C.R.P No.3783 of 2015, under Article 227 of the Constitution of India, is filed the petitioner/2nd defendant being aggrieved of the dismissal orders dated 23.06.2015 passed by the learned VIII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar in I.A.No.197 of 2014 in O.S.No.2039 of 2006 filed under Section 151 of Code of Civil Procedure, 1908 requesting to reopen the evidence on the side of the plaintiff.

1.1 C.R.P No.3786 of 2015 is also filed by the petitioner/2nd defendant being aggrieved by the dismissal orders dated 23.06.2015 in I.A.No.196 of 2014 in O.S.No.2039 of 2006 filed for recalling of PW1 for further cross-examination on behalf of the 2nd defendant.

2. I have heard the submissions of learned counsel for the petitioner/2nd defendant in both the revision petitions. I have perused the material record.

3. The respondents 1 and 3 herein had died. Respondents 2, 4 and 5, who are the co-defendants, are stated to be not necessary parties. Though, Sri M.W.R. Jayakar, learned counsel had entered appearance for the 6th respondent, there is no representation.

4. The case of the 2nd defendant, as stated in the affidavits filed in support of the petitions, to reopen the evidence and recall of PW1, in brief, is this: "His counsel passed away. Therefore, there was communication gap. When the matter is posted for the evidence on his side, he came to know about the progress that was made in the suit.

Till such time, he was not aware of the proceedings that had taken place in the suit. The other counsel on record appearing for him gave no objection vakalat along with the case bundle. On that he had engaged the present counsel. On verification made by the said counsel, it is noticed that certain material questions with reference to particular documents exhibited were not put to PW1 during the cross-examination. The said material questions, which were not put, have to be necessarily put to the said witness to substantiate the defence of the 2nd defendant. Therefore, the 2nd defendant is obliged to file the petitions.

6. Before the trial Court, the plaintiff had filed counter affidavits *inter alia* contending that the petitions are intended to delay the matter; and that no *bona fide* reasons are urged in support of requests in the applications; and that mere change of the counsel is not a reason to grant the requests. The plaintiff had thus prayed for dismissal of the petitions.

7. On merits, the trial Court had dismissed both the petitions.

8. The learned counsel for the defendant having reiterated the case of the defendant, which is stated supra, had submitted that the trial Court had erred in appreciating the contentions of the defendant in support of his requests for reopening the evidence and recalling PW1. He would also submit that except stating that there are no *bona fides* and that the petitions are intended to delay the progress of the trial, nothing else was stated in the counters of the plaintiff filed before the trial Court.

9. I have given earnest consideration to the facts and the submissions. In the circumstances stated by the defendant and in view of the fact that the matter is before the trial Court, this Court is of the well considered view that one more opportunity can be given to the

2nd defendant to cross-examine PW1. In the considered view of this Court, such a course sub serves the ends of justice.

10. Thus, this Court finds that the orders impugned in both revision petitions warrant interference.

11. In the result, both the revision petitions are allowed and the orders impugned in the revisions are set aside. Accordingly, I.A.Nos196 and 197 of 2014 in O.S.No.2039 of 2006 are allowed. Evidence on the side of the plaintiff is re-opened and the 2nd defendant is permitted to further cross-examine PW1.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these two revision petitions shall stand closed.

JUSTICE M. SEETHARAMA MURTI

22nd APRIL, 2016
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Date: 22.04.2016

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