

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION NOs.5421 OF 2015

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ORDER:

This revision, under Article 227 of the Constitution of India, is preferred against the order passed by the Junior Civil Judge, Gajuwaka in I.A. No.927 of 2015 in O.S. No.145 of 2008 dated 02.11.2015.

I.A. No.927 of 2015 was filed by the petitioner-defendant to recall D.W-1 for marking his photograph with corresponding CD. In the I.A. filed before the Court below, he contended that he was a stranger to the respondent-plaintiff; the respondent-plaintiff never saw him at any point of time; and due to a mistake he had failed to mark the said photograph with the CD during the trial. In their counter filed before the Court below, the respondent-plaintiff contended that the application was filed only when the matter was posted for judgment, and only to drag on proceedings; the plaintiff, during his cross-examination of P.W-1, had admitted that he could not identify the defendant through the photograph; and there was, therefore, no need to mark the photographs of the defendant.

In the order under revision, the Court below observed that a perusal of the cross-examination of the plaintiff as P.W-1 showed that he could not identify the defendant through the photograph, and he could identify the defendant only if he was physically present; the defendant had nowhere stated, in the written statement, that he was a stranger to the plaintiff, and the plaintiff had never seen him at any point of time; evidence, beyond pleadings, could not be allowed more so when the plaintiff had clearly stated, during cross-examination, that he could not identify the defendant through the photographs; there was no need to mark the photographs of the defendant as it played no role in deciding the suit; the suit was filed in the year 2008, and the I.A. was filed, when the matter was posted for judgment, along with the petition to reopen the suit; and there were no merits in the petition. The I.A. was dismissed.

Before this Court Dr. P.B. Vijaya Kumar, Learned Counsel for the petitioner, would reiterate the very same submissions which was urged by the petitioner before the Court below. As has been observed by the Court below, in the order under revision, the respondent-plaintiff admitted, in cross-examination, that he could not identify the petitioner herein from the photographs, and he could do so only in person. The Court below has rightly held that, in the light of the admission of the respondent-plaintiff, it was unnecessary to reopen the evidence of D.W-1 to have his photographs marked, and the CD produced.

The jurisdiction which this Court exercises, under Article 227 of the Constitution, is supervisory and not appellate. Save patent illegality in the order under revision, no interference is called for. The order of the Court below does not suffer from any such infirmity necessitating interference under Article 227 of the Constitution of India. The Civil Revision Petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

RAMESH RANGANATHAN, J

Date: 19.02.2016.

MRKR