

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.2506 & 2784 of 2016

COMMON ORDER:

These two Civil Revision Petitions are filed challenging the Order in I.A.No.522 of 2014 and I.A.No.411 of 2015 in O.S.No.227 of 2010. These two petitions are filed under Section 151 of Code of Civil Procedure (for short 'CPC') and Order 18 Rule 17 CPC to reopen the evidence of plaintiff's side and recall of Pw.1 for cross examination on the ground that Sri Rama Sharma Susarla, learned counsel for Revision Petitioner was held up in High Court in connection with other matter and hence he could not cross examine the witness and thereby, the trial Court closed the evidence of PW.1.

2. The respondents filed Counter before the trial Court in both the petitions contending that when the matter was posted for affidavit of Pw.1 under Order 18 Rule 4 (2) of CPC and notice was served on the revision petitioner, though the counsel knows about the obligation to cross examine PW.1, there was neither representation on his behalf nor the Advocate was present. Therefore, the trial Court having no other option except to close the cross examination recording as 'Nil'.

3. Learned counsel for Revision Petitioner mainly contended that the absence of Advocate for cross examination of PW.1 is only due to unavoidable circumstances i.e., he was held up in the High Court in connection with other matter.

4. Learned counsel for respondents/plaintiff while contending that the Revision Petitioner filed this petition after long lapse of time and therefore, there are no bonafides in the claim of the petitioner and prayed for dismissal of the revision petitions.

5. It is the case of the Revision Petitioner from the beginning that the counsel for petitioner was held up in the High Court and hence, he could not cross examine the witness-PW.1. In normal course, when the Advocate is held up in another case, it is the duty of the Advocate is to make necessary alternative arrangement or at least get the matter represented through somebody requesting to take the matter after short time. But, instead of resorting to such procedure, the counsel simply stating that he was engaged in high Court and did not cross examine the witness. Therefore, the trial Court rightly closed the evidence of Pw.1. But, to do substantial justice to both parties, I find that it is a just cause to avoid unnecessary hardship to the parties on account of the mistake of the Advocate. No doubt, on account of filing these two petitions, the disposal of the matter is being delayed, but such delay can be compensated by granting costs to the respondents/plaintiffs.

6. Taking into consideration the facts and circumstances of the case, I find that it is a fit case to allow both the Revision Petitions setting aside the impugned Order passed by the trial Court on payment of costs of Rs.1000/- payable to the respondents/plaintiffs by the revision petitioner within a week from today and thereupon, the trial Court has to fix a specific date for cross examination of Pw.1, after recalling the witness, and on the date fixed by the trial Court, the counsel for revision petitioner has to cross examine the witness. In the event of failure to pay costs or cross examine the witness on the date fixed by the trial Court, these two petitions shall stand dismissed automatically.

7. Accordingly, these two Civil Revision Petitions are allowed.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 29-08-2016.

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