

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.1503 of 2016

ORDER :

The facts culminated in maintaining the revision petition include acts of the lower Court. Among the four witnesses on behalf of the defendants examined before the lower Court, leave about no dispute on D.W-1 and 2's evidence, D.W-3 was one Abdul Basit Khan, through him Exs.B-1 and B-5 marked. His chief-affidavit running in two paras was submitted before the lower Court in O.S. No.10 of 2009 with verification of the affidavit on 02.12.2011 that speaks only with reference to Exs.B-1 and B-5. The Court has taken up chief-examination on oath as contemplated by Order XVIII Rule 4 C.P.C and exhibited the Exs.B-1 and B-5. It is while coming for his cross-examination from he left the country, a memo was filed on behalf of the very defendants to eschew his evidence (own witness). That is practically of K.Abdul Basit Khan and no others from the above.

2) In fact eschewing of evidence once brought on record is unknown to law, but for a loose reference in any expression, as the evidence brought on record, if not relevant and not admissible including from witness who filed chief-affidavit and stated the contents as correct on taken as chief-examination failed to come to the witness box to face the cross-examination being incomplete and

not at all to be considered, unless the deposition satisfies the requirements of Section 33 of the Indian Evidence Act. Thereby, it is only not to consider the same as evidence to appreciation for not faced cross-examination; but for that the evidence placed on record cannot there from be eschewed out of the record. There is a basic difference between not to consider the evidence placed on record for not a complete evidence as not faced cross-examination; to eschewing the same from record which is unknown to law leave it as it is, the lower Court committed another mistake instead of eschewing as sought for of the D.W-3-K.Abdul Basit Khan's evidence, eschewed the valid evidence brought on record of Sri S.Prabhakar Reddy, Advocate. It is due to the mistake of the Court in again given the array of his evidence as if of D.W-3. It is that mistake culminated in recording the memo without mentioning the name of the witness, even which clearly states Exs.B-1 and B-5 marked in the deposition of D.W-3 who left for Kuwait and out of availability thereby to eschew for recording, instead of treating the same with no value. In fact while recording evidence of Prabhakar Reddy as D.W-4, only Ex.B-6 marked. The Court from the above out of its fault and mistake contributed to it, eschewed the evidence of Prabhakar Reddy as if the same asked by the defendants as of D.W-3.

3) It is to make it clear further that what is to eschew

of D.W-3 with reference to Exs.B-1 and B-5 is of K.Abdul Basit Khan and not of Prabhakar Reddy with Ex.B-6, that to be designated in the array of evidence only as D.W-4.

4) Earlier a revision is maintained against the order, that was withdrawn, with an advise to file an application to examine said Prabhakar Reddy again. Dismissal of the same by impugned order is now subject matter of the revision. Though as of right, the petitioner/defendant is not entitled to ask this Court to sit against the impugned order for his mistake also there once there is an act of Court that also contributed as referred supra which shall not prejudice the right of the parties, that too when the intention of the defendant in filing memo is to treat out of consideration, evidence in chief of K.Abdul Basit Khan and not of Sri S.Prabhakar Reddy, eschewing of the evidence of Prabhakar Reddy by the Court is since a wrong done and once a wrong thing done at the end of the Court, the Court should have been out of its inherent power under Section 151 C.P.C which inheres from its very constitution, rectify the mistake. The lower Court instead of doing so, dismissed the application on technicality by giving much importance to the contention of the plaintiff, which approach of the trial Court since incorrect, to subserve the ends of Justice this Court is constrained to rectify by allowing the revision.

5) Having regard to the above, the revision is

allowed by setting aside the order of the lower Court, which come in the way and only to the extent of treating the evidence of Abdul Basit Khan with reference to Exs.B-1 and B-5 with no value and there from, the evidence of Prabhakar Reddy with reference to Ex.B-6 for all purposes validly on record including his chief and cross-examination on record and to proceed further with the matter on other merits. Needless to say if there is any further cross-examination of said Prabhakar Reddy referred as D.W-3 ultimately now directed to rectify as D.W-4 by restoring, to permit such further cross-examination, and re-examination, if any.

6) Miscellaneous petitions, if any pending, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

29.08.2016
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