

THE HON'BLE SRI JUSTICE RAJA ELANGO

CIVIL REVISION PETITION Nos.5144, 5507 AND 5471 OF 2016

COMMON ORDER:

Since the petitioners in all these revision petitions are one and the same and all the revisions are arising out of same set of facts, these revision petitions are disposed of by this common order.

CRP No.5144 of 2016 is filed by the petitioners-defendants challenging order, dated 07.09.2016, passed in I.A. No.3584 of 2015 and CRP No.5507 of 2016 is filed challenging order, dated 07.09.2016, passed in I.A. No.3585 of 2015 and CRP No.5471 of 2016 is filed challenging order, dated 07.09.2016 passed in I.A. No.3586 of 2015 by the III Additional District Judge, Kakinada. The petitioners filed I.A. No.3584 of 2015 to reopen the suit i.e. O.S No.188 of 2013 for the purpose of cross-examination of PWs.1 and 2 by them, and I.A. No.3585 of 2015 to re-call PWs.1 and 2 and I.A No.3586 of 2015 to give a direction to the plaintiff in O.S No.188 of 2013 to file all the chief affidavits before the Court below.

Heard and perused the material available on record.

The petitioners are the defendants in O.S No.188 of 2013. The respondent filed the said suit against the petitioners for recovery of an amount of Rs.8,00,000/- alleging that the wife of the 1st petitioner, who is no more, took the said amount from the respondent by executing a promissory note. On 27.11.2015, when the case was posted for cross-examination of PW.1, the respondent – plaintiff filed chief affidavit of PW.2 and therefore, on the request of the learned counsel for the petitioners, the matter was adjourned to another date. Thereafter, due to ill-health, the counsel for the petitioners could not appear before the

Court below for cross-examining PWs.1 and 2, and therefore, the matter was adjourned from time to time. Thereafter, the Court below closed the cross-examination of PWs.1 and 2 and posted the matter for the petitioners' side evidence. Hence, the petitioners filed the above I.As., to reopen the case, to recall PWs.1 and 2 for cross-examine them and to direct the respondent to file all the chief affidavits before the Court. The Court below dismissed the said applications vide separate orders, dated 07.09.2016. Aggrieved over the same, the present revisions are filed.

Learned counsel for the petitioners submitted that the counsel for the petitioners before the Court below could not appear before the Court due to ill-health on the dates when the matter was posted for cross-examining PWs.1 and 2 and hence, the Court below closed evidence on plaintiff's side, and that there is no wilful default on the petitioners' side and that the petitioners have a good case and due to non-appearance of their advocate, the petitioners may put to irreparable loss.

Learned counsel for the respondent submitted that the petitioners have given ample opportunity by the Court below to cross-examine PWs.1 and 2, but they failed to cross-examine them and therefore, he requested to dismiss the revision petitions.

After perusing the material available on record and also the order passed by the Court below, this Court is of the view that the petitioners can be given one more opportunity for cross-examine PWs.1 and 2, on imposition of payment of costs.

Hence, CRP Nos.5144 and 5507 of 2016 are allowed setting aside the orders, dated 07.09.2016, passed in I.A. Nos.3584 and 3585 of 2015 by the III Additional District Judge, Kakinada, on condition of petitioners –defendants paying a sum of Rs.7,000/- (Rupees seven thousand only) as costs to the respondent –plaintiff. On such payment of costs, the Court below is directed to reopen the evidence of PWs.1 and 2, and permit the petitioners to cross-examine them by fixing a date, and dispose of the said suit, as expeditiously as possible.

Learned counsel for the petitioners submitted that in view of the orders passed in the CRP Nos.5144 and 5507 of 2016, there is no need to pass any orders in CRP No.5471 of 2016.

Accordingly, CRP No.5471 of 2016 is dismissed. There shall no order as to costs. Miscellaneous petitions, pending if any, shall stand closed.

November 16, 2016
KTL

RAJA ELANGO, J

