

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Civil Revision Petition Nos.3626 and 3627 of 2016

COMMON ORDER:

C.R.P.No.3626 of 2016 is filed by the petitioner/defendant against the orders in I.A.No.238 of 2015 in O.S.No.88 of 2006; whereas C.R.P.No.3627 of 2016 is filed by her against the orders in I.A.No.239 of 2016 in O.S.No.88 of 2006 on the file of Junior Civil Judge, Rajampet. I.A.No.238 of 2015 was filed by the defendant to re-open the suit to adduce the further evidence of defendants; whereas I.A.No.239 of 2015 was filed by her to set aside the order eschewing the evidence of DW3. Both the petitions were dismissed by the trial Court. Hence, the instant CRPs.

2) Heard arguments of Sri K.Chidambaram, learned counsel for petitioner and Sri J.Seshagiri Rao, learned counsel for respondents.

3) Learned counsel for petitioner would submit that the suit—O.S.No.88 of 2006 was coming up for further evidence of defendants and DW3 was examined in chief and the matter was posted to 13.08.2015 for the cross-examination of DW3 and on that day she was present in the Court and her advocate reported ready and during criminal trial work the Court called her advocate and informed that the case would be adjourned due to heavy criminal work and her advocate requested to post the suit on 18.08.2015 and later her advocate informed her that the matter would be posted to 18.08.2015 and therefore, petitioner left the Court and on 18.08.2015 when the petitioner attended the Court she came to know that evidence of DW3

was eschewed and the case was posted for arguments to that date. He further submitted that on 13.08.2015 petitioner left the Court on the information of her counsel that the matter would be adjourned to 18.08.2015 and there were no laches on her part. He thus prayed to set aside the impugned orders and give an opportunity to the petitioner.

4a) Per contra, learned counsel for respondents/plaintiffs would contend that the petitioner was not diligent throughout the trial, in as much, as her (DW1) chief affidavit was filed on 29.07.2013 but she did not appear for cross-examination and her counsel took number of adjournments by way of filing petitions till 06.10.2014 and at last on 20.10.2014 the Court eschewed the evidence of DW1 and posted for arguments. At that juncture the defendant filed I.A.No.326 of 2014 to reopen the matter and the said IA was allowed and even then DW1 did not get ready, but took further adjournments on a number of times for her cross-examination and ultimately the cross-examination of DW1 could be completed only on 17.03.2015 and thereafter the defendant filed I.A.No.71 of 2015 to summon some of the witnesses and though the said petition was allowed, the defendant did not choose to examine her witnesses within time and all the aforesaid back ground would show, he argued, the defendant was not cooperating with the Court to complete the trial and on the other hand, taking number of adjournments without any probable cause.

b) He further argued that on 04.08.2015 the defendant filed chief affidavit of DW3 and the matter was posted for cross-examination of DW3

to 13.08.2015 finally and on that date since nobody represented the matter on behalf of defendant, the matter was passed over on the representation of counsel for respondents/plaintiffs and after trial work was over the Court once again called the suit for appearance of DW3 but the witness did not appear. Hence, the Court was constrained to eschew the evidence of DW3 and posted for arguments on 18.08.2015. Learned counsel thus vehemently argued that in view of the conduct of the defendant, absolutely there were no merits in the two petitions—I.A.Nos.238 and 239 of 2015 and the trial Court rightly dismissed those petitions and hence the revisions may also be dismissed as there is nothing to interfere with the impugned orders.

5) In the light of above rival arguments, the point for determination is:

“Whether there are merits in the CRPs. to allow?”

6) **POINT:** As can be seen from the impugned orders and the respective arguments of both sides, the past conduct of the defendant would no doubt show that there were some laches on her part in proceeding with the trial and there is no demur in it. However, considering the fact that the suit filed by the respondents is one for declaration and for mandatory injunction wherein valuable rights of both sides are at stake and also considering the fact that the trial is at the fag end i.e. at the stage of cross-examination of DW3, this Court is inclined to grant final opportunity to the defendant to complete her evidence but of course on heavy costs.

7) Accordingly, the two CRPs. are allowed by setting aside the orders in I.A.Nos.238 and 239 of 2015 in O.S.No.88 of 2006 and the suit is reopened

for further evidence of defendant on the condition of the petitioner/defendant depositing costs of Rs. 1,000/- (Rupees one thousand only) with the Mandal Legal Services Committee, Rajampet or District Legal Services Authority, Kadapa on or before 10.11.2016 and on the further condition of defendant producing DW3 and her other witnesses in Court on 14.11.2016, failing which this order shall be deemed to be cancelled.

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

Date: 02.11.2016

Murthy



U. DURGA PRASAD RAO, J