

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION NO.855 OF 2016

ORDER:

Despite service of notice, neither are the respondents present nor has any counsel entered appearance on their behalf. Heard Ms. T.V.Sridevi, learned counsel for the petitioner. This revision, under Article 227 of the Constitution of India, is preferred against the order passed by the Court below in I.A.No.22 of 2016 in O.S.No.356 of 2005 dated 25.01.2016.

The petitioner herein filed I.A.No.22 of 2016 to set aside the order dated 18.01.2016 whereby the plaintiff's right to cross examine D.W.1 was forfeited. In the order under revision, the Court below observed that D.W.1 was present before the Court three times for the purpose of cross examination; the plaintiff had requested time to cross examine D.W.1 on three occasions; the Court had forfeited the petitioner's right on the third occasion; while the petitioner had requested for time, the very fact that the suit was filed in the year 2005, and eleven years had elapsed from the date of filing of the suit, showed that the plaintiff himself was procrastinating the matter; and, hence, the I.A. was liable to be dismissed.

Ms. T.V.Sridevi, learned counsel for the petitioner, would submit that, while the suit is no doubt of the year 2005, trial of the suit commenced only on 21.09.2015, and the defendants were directed to proceed with cross examination of the plaintiff; cross examination of P.Ws.1 to 4 was completed on 30.11.2015, and the suit was posted for the defendants' evidence; D.W.1 filed a petition in I.A.No.307 of 2015 to receive 15 documents which were not mentioned in the written statement, and it was allowed on 11.12.2015; again D.W.1 filed another petition in I.A.No.324 of 2015 on 17.12.2015, and the same was allowed; consequently, D.W.1 marked Exs.B1 to B28 on 22.12.2015; and, as the petitioner had to verify the documents and ascertain its truth and genuineness, the Court below erred in forfeiting

the petitioner's right to cross examine D.W.1.

Ms. T.V.Sridevi, learned counsel for the petitioner, would submit that the suit was listed for cross examination on 28.12.2015 on which date D.W.1 was present, and the petitioner sought time; the matter was posted to 04.01.2016 on which date also D.W.1 was present, and the matter was posted to 07.01.2016 on which date D.W.1 was not present; and, as such, the matter was posted to 18.01.2016 on which date the petitioner sought adjournment for a third time; and, considering the facts of the case, the Court below ought to have granted at least one more opportunity to the petitioner herein to cross examine D.W.1.

While the suit is no doubt of the year 2005, it does appear that the petitioner's request for adjournment was only from 28.12.2015 onwards; and the order, forfeiting their right of cross examination, was passed on 18.01.2016 i.e., within 20 days from 28.12.2015. The Court below could have considered granting time to the petitioner to cross-examine D.W.1 on terms. As the Court below has failed to do so, I consider it appropriate to set aside the order, and permit the petitioner to cross examine D.W.1 on payment of costs of Rs.5,000/- (Rupees five thousand only) to the first defendant within one week from today. Failure to pay costs, and to file proof of payment of costs before the Court below within the aforesaid time, would result in revival of the order, under revision, passed by the Court below. In case costs are paid, the Court below shall fix a date for cross examination of D.W.1. The petitioner shall examine D.W.1 without taking any further adjournment. Failure to cross examine, on the date fixed, would enable the Court below to forfeit the petitioner's right to cross-examine D.W.1.

The Civil Revision Petition is, accordingly, disposed of. There shall be no orders as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

4th March 2016

Note: Issue CC today

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