

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
CIVIL REVISION PETITION Nos.684, 685, 686, 687, 688, 689, 690 and
691 OF 2011

COMMON ORDER :

Since the same issue arises for consideration in all these Revisions, they are being disposed of by this common order.

2. The 1st respondent in all the Revisions had filed four suits for recovery of money against the petitioner-firm.

3. Written statements were filed by the petitioner/1st defendant and other defendants alleging that when the 5th defendant was managing partner of the petitioner/1st defendant, certain false, invented and concocted entries were made in the account books of the petitioner and petitioner is not liable to pay any amounts to the respective 1st respondents.

4. Issues were framed, trial concluded and the matter was posted for arguments.

5. At that stage, the petitioner herein filed applications in all the four suits to re-open the suits and to issue summons to the 5th defendant to give evidence.

6. In the affidavit filed in support of the applications to re-open the suits, it was contended that 5th defendant was the managing partner of the petitioner firm for the period of suit claim; that he is well acquainted with the affairs of the petitioner and also had knowledge about the accounts of the petitioner during his tenure; and that he is a competent witness to give evidence with regard to the suit claim. It is also contended that the 5th defendant is now sailing with the plaintiff, acting

adversely to the interest of the petitioner and he had remained ex-parte in the suits; that the 5th defendant has to be examined as a witness on behalf of the petitioner to protect the interest of the company but he is not ready to do so; and therefore it is necessary to re-open evidence in all the suits for summoning the 5th defendant as a witness in the suits.

7. Counter affidavits were filed by the respective 1st respondents opposing these applications. They contended that there is no ground to allow the said applications. It was also pointed out that the applications were filed at a belated stage, when the matters were posted for argument, that there are no bonafides on the part of the petitioner and these applications had been filed only to drag on the matter with malafide intention.

8. By separate orders dt.31.01.2011, the Court below dismissed all the applications. It noted that the applications had been filed with considerable delay after the evidence was closed and the matter was posted for arguments, and that it is possible that these applications have been filed to drag on the proceedings. It also noted that even according to the petitioner, the 5th defendant was sailing with the 1st respondent in respective suits and acting adversely to the interest of the petitioner. Therefore, summoning the 5th defendant to give evidence on behalf of the petitioner would be futile. It further held that the affidavits filed by the petitioner are not specific as to the aspects on which he wishes to examine the 5th defendant and therefore, there is no necessity to re-open the evidence.

9. Challenging the same, these Revisions are filed.

10. Heard Sri G.Vijaya Babu, Counsel for the Revision Petitioners

and Sri P.R.Prasad, Counsel for 1st respondent in all the Revisions, except in CRP.No.688 of 2011.

11. The counsel for petitioner contended that even if there is negligence on the part of the petitioner in filing the applications to re-open the evidence and summoning the 5th defendant as a witness to give evidence, since valid reasons have been assigned in the affidavits filed in support of the applications, the Court below ought to have exercised its power under Order XVI CPC and summoned the 5th defendant after re-opening the evidence, which had been closed. He relied upon the judgments in ***M.Munaswami Naikdu and another v. Smt K.Nagamani***^[1], ***Addagatla Narender v. Some Vijayalakshmi***^[2] and ***Thimmaraju Shyama Sunder Rao and another v. Thimmaraju Jittender Rao and others***^[3].

12. Counsel for respective 1st respondents refuted the above contentions. He contended that Order XVI Rule 14 CPC is attracted since the petitioner wants to summon the 5th defendant and the said provision would apply only if the Court is satisfied about the necessity to examine the 5th defendant as a witness and the Court cannot be compelled by any party to summon the 5th defendant as its witness. He relied upon the decision in ***Shaik Abdul Rasool S/o late S.Khader Saheb v. G.Lakshmi Reddy S/o G.Peddi Reddy and G.Umadevi W/o G.Manmohan Reddy***^[4] (CRP.No.4630 of 2010).

13. Both parties have stated that the 5th defendant, who is sought to be summoned as a witness, had remained ex parte in the suits.

14. A reading of the complaints in the suits suggests that according to the

respective 1st respondents/plaintiffs, the amounts were borrowed by the petitioner-firm and the said transactions were also reflected in the accounts of the petitioner-firm by the 5th defendant, who was the managing partner of the petitioner. If the petitioner wanted the 5th defendant to be examined as its witness, it ought to have taken steps during the pendency of trial, before the evidence was closed. The fact that the applications have been filed after the trial concluded and the matter was posted for arguments, suggests that the filing of the applications is not bonafide. Further, the reading of the applications filed by the petitioner also suggests that the 5th defendant was not ready to give evidence on behalf of the petitioner and therefore, he wants him to examine as a Court witness.

15. The Court below has rightly observed that the 5th defendant admittedly acted adverse to the interests of the petitioner, and therefore, to compel him to give evidence would not be in the interest of the petitioner itself, since it unlikely that his evidence would be helpful to the petitioner.

16. In ***Shaik Abdul Rasool*** (4 supra), this Court held that Order XVI Rule 14 CPC empowers the Court on its own accord to summon a person as a witness and this cannot be done on the insistence of a party to the suit, although the party can place any information, which might impress upon or convince Court to exercise its powers under this provision.

17. No doubt, in the decisions cited by the petitioner there are observations to the effect that if reasons are furnished by a party, for seeking to summon a person as a witness, even if such application is filed belatedly, the Court may consider the same.

18. Even assuming for the sake of argument that Order XVI Rule 1 CPC is attracted, the power of the Court to summon a witness is subject to Clause(3) thereof, which suggests that the Court may for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule(1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

19. Therefore, it is imperative on the part of the petitioner to also disclose why such an application could not be made at an earlier point of time.

20. No explanation is forthcoming from the petitioner in this regard.

21. Therefore, I am of the opinion that the Court below had rightly rejected the applications and I do not find any error of jurisdiction in the orders passed by the Court below refusing to re-open the suits and issue summons to 5th defendant to give evidence.

22. Accordingly, all these Civil Revision Petitions are dismissed. There shall be no order as to costs.

23. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

16th February, 2016.
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[\[1\]](#) 1996(3) ALT 1049

[\[2\]](#) 2006(3) ALT 422

[3] 2007(3) ALT 378

[4] MANU/AP/0902/2010