HON'BLE SRI JUSTICE S.V. BHATT

CIVIL REVISION PETITION No.5875 OF 2015

ORDER:

Heard Sri Seshagiri Rao learned counsel for the petitioner and Sri Subodh for respondent.

The defendant in O.S. No.208 of 2014 in the Court of V Additional District Judge, Nellore, is the revision petitioner. The revision petitioner filed I.A. No.269 of 2015 to recall PW.1 for further cross examination. Through the order impugned in the revision petition, the trial Court dismissed I.A. No.269 of 2015. The relevant portion of the order reads thus:

> "After hearing the arguments on both sides the point for consideration is:
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> Whether it is just and necessary to recall PW.1 for further cross examination by the petitioner?
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> As seen from the case records the chief affidavit of PW.1 was filed on 31-10-2014 and PW.1 was examined in cross on 02.04.2015 and again continued the cross examination on 23-04-2015. As seen from cross examination of PW.1 the petitioner proceeded with cross examination in the evidence of PW.1 in length. When matter was coming for cross examination of PW3, the petitioner filed this petition. Basically it is not the case of the petitioner that the facts which are stated in the affidavit in support of the petition came to his knowledge only when main suit was posted for cross examination of PW.3.
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> As seen from the averments in the affidavit in support of the petition, it clearly goes to show that whatever the facts he stated in the affidavit in support of the petition were within the knowledge of the petitioner while filing his written statement and also while PW.1 was examined in cross in this suit. The petitioner did not avail the opportunity while PW.1 was examined in cross in length. The petitioner did not give any satisfactory reasons as to why he failed to cross examine PW1 in respect of the present allegations made in his affidavit in support of this petition when PW1 was examined in cross. As such the petitioner did not give any satisfactory reasons to

> recall PW1 in order to give an opportunity to him to proceed with further cross examination. In the said circumstances it is very clear that the petitioner with an intention to prolong the litigation, filed the present petition which cannot be allowed. In the aforesaid circumstances this Court find no merits in the petition. Accordingly this petition is to be dismissed with costs.
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> In the result, the petition is dismissed and in the circumstances with Costs of Rs.1000/- (Rupees one thousand only) payable by the petitioner to the respondent."

Hence the revision.

Sri Seshagiri Rao contends that the purpose for recalling PW.1 is stated in great detail and the trial Court having found that the revision petitioner is procrastinating trial of the matter, on an erroneous view of the prayer, committed illegality by dismissing the application with costs. He further contends that the purpose of recalling is not appreciated by the trial Court, for the revision petitioner intends to cross examine PW.1 with reference to document dated 15.02.2014 wherein the respondent/plaintiff is one of the witnesses. If PW.1 is recalled, it is submitted, the cross examination will be completed by putting a few questions and on the date appointed by this Court. He prays for allowing the revision and alternatively to set aside the direction imposing costs on the revision petition.

Sri Subodh, appearing for respondent, contends that the revision petitioner herein is in the habit of procrastinating the trial and he used to file one application or the other and the instant application is one such. On merits of revision, he contends that the suit is one for recovery of amount due and payable under the suit promissory notes. The alleged sale transaction dated 15.02.2014 by no stretch of imagination can be treated as a relevant circumstance and on the contrary the answer that could be given on this behalf is already covered in the cross examination dated 02.04.2015. He draws the attention of the Court to the findings excerpted above and prays for dismissal of the revision.

I have heard learned counsel and taken note of the submissions. The short point for consideration is whether the order impugned in the revision suffers from illegality or material irregularity and that the trial Court failed to exercise its discretion in right perspective?

The suit is one for recovery of amount due and payable under suit promissory notes. The revision petitioner has set up among other things the plea of discharge. The revision petitioner contends that the respondent/plaintiff was one of the witnesses to sale deed dated 15.02.2014 and revision petitioner has made over the consideration received by him from that sale transaction to the respondent/plaintiff. The cross examination was conducted on 02.04.2015 and 23.04.2015. The questions relevant for the purpose have already been put to PW.1 and revision petitioner elicited answers. The revision petitioner if at all like to prove the part payment pleaded in the written statement, the revision petitioner can certainly discharge the burden while he enters into the witness box. At this stage, when the evidence of plaintiff is over, I do not see any justification to recall PW1. Accordingly, with the final result of the trial Court, I am in full agreement, but imposing of Rs.1,000/- costs while deciding an application appears to be harsh and unreasonable. It is not the case of even the respondent herein that for cross examination of PW1, earlier an opportunity was afforded to revision petitioner, he availed it and another application is filed for further cross examination. For these two reasons, the costs of Rs.1000/- imposed by the trial Court on the revision petitioner are set aside and the CRP is allowed -in -part. No costs.

It is needless to observe that as the request of revision petitioner for cross examination is refused, it does not mean that this Court is expressing any view on the entitlement of revision petitioner to prove the part payment pleaded in the written statement, when the revision petitioner gets his turn.

S.V. BHATT,

J

Date: 29.01.2016

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