

***HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**
+ CIVIL REVISION PETITION Nos.5349 & 5350 of 2015

% 26-08-2016

C.R.P. No.5349 of 2015:

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#Badana Mutyalamma and another
....Petitioners

Vs.

\$ Palli Appala Raju
.... Respondent

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C.R.P. No.5350 of 2015:

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#Badana Mutyalamma and another
....Petitioners

Vs.

\$ Palli Appala Raju
.... Respondent

!Counsel for the Petitioners : Sri Simhachalam Barapareddy

Counsel for the Respondent : Sri Karri Murali Krishna

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>Head Note:

? Cases referred:

1. 2016(3) ALD 162 (SC)
2. (2011) 11 SCC 275

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
CIVIL REVISION PETITION Nos.5349 & 5350 of 2015

COMMON ORDER:

The revision petitioners in both the revision petitions are the defendants in O.S.No.448 of 2004 on the file of Principal Junior Civil Judge, Srikakulam. The petitioners filed two petitions viz., to reopen the matter and to recall P.W-1 for the purpose of further cross-examination. Both the petitioners were dismissed by the learned Principal Junior Civil Judge. These petitions after contest and elaborate arguments by both sides ended in dismissal by the impugned orders dated 21.08.2015 in I.A.Nos.654 & 655 of 2015 before the trial Court referred supra. The trial Court held that the defendants, petitioners herein, filed said petitions to pose certain questions and suggestions which were earlier omitted by defendants' counsel, which is nothing but filling up the lacunae, that too at the fag end of the proceedings and hence dismissed. Those are now impugned in these revisions.

2) The learned counsel for revision petitioners reiterated grounds of revision and drawn attention to their affidavit petition before lower Court speaking the need. Whereas the learned counsel for the respondents while supporting the order of the lower Court, submits further that the affidavit is laconic as to what are the relevant questions to be put that supposed to mention, apart from impleadment of new parties and their defence put forth no way improves their case to recall P.W-1 and thereby sought for dismissal of the revision saying for this Court

within the limited powers of revision, there is nothing to interfere.

3) Heard and perused the material on record and the decisions placed reliance by both sides in the course of their respective and lengthy submissions.

4) The law is fairly settled that in a suit of the plaintiff even there are different defendants raising different contest and inter se between them even any conflict of interest, nothing therefrom operates as *res judicata*, to later work out their independent rights; but for to consider only the scope of the lis between the plaintiff and the defendants either plaintiff entitled to relief or not.

5) It is needless to say the procedural law is hand maid and not mistress of justice. The very object of trial by directing the parties to present their pleadings and settlement of issues to decide controversy pursuant thereto by permitting to adduce evidence is to arrive at the truth out of the vogue of trial. In that course, technicalities thereby cannot be given much importance and there is nothing to encourage by passing of the procedure without following due process of law or rules of evidence even from the basic principle in saying procedural law is hand maid of justice.

6) While keeping the above in mind coming to the power of the right for same is not right of a party but for to

bring to the Courts notice any such need to exercise the discretionary power on the scope of Order XVIII Rule 17 CPC, the latest expression of the Apex Court in **Ram Rati Vs. Mange Ram (D) thr. LRs. And Others**^[1] at Para 11 referring to the earlier expressions of the Apex Court including in **K.K. Velusamy Vs. N.Palanisamy**^[2] (which is in suit for specific performance of the contract for sale) that, the power even to exercise besides the specific rule is to make orders for ends of justice or prevent abuse of process. Further coming to the provisions in Order XVIII Rule 17 CPC the basic purpose postulated is to enable the Court to clarify any position or doubt and the Court may either suo motu or on the request of the party, recall any witness at any stage in that regard. This power can be exercised at any stage of the suit. No doubt once the Court recalls the witness for the purpose of any such clarification, the Court may permit the parties to assist the Court by examining the witness for said purpose of clarification required or permitted by the Court. The power cannot be stretched any further. The power cannot be invoked to fill up the gaps and any prejudice cause or not thereby to a party by exercise of such a power is also a ground for consideration in exercise of the discretion.

7) From this, the law is very clear on the scope of Order XVIII Rule 17 CPC, as to the power of the Court equally provided in Section 165 of the Indian Evidence

Act to permit any party to call for any witness to put any questions where the Court felt necessity.

8) For that to decide by Court of such necessity, the affidavit petition of a party requiring the Court to invoke the same is supposed to demonstrate what are the questions to be put. However, had it been stated in the affidavit it gives pre-indication to the opposite party to alert and to avoid answers conveniently by preparation. The law is uncertain in this regard. Once not disclosed the question or area of questions on relevancy, the Court could not understand and once disclosed the other party being alerted to avoid answers. In view of this, the proper recourse that can be adopted by Court to follow by the trial Court to subserve the ends of Justice and to avoid baseless and time consuming petitions to procrastinate the lis by putting spokes to the disposal is in asking the party when seeks recall of any witness/s to give in a sealed cover to the Court what are the questions to be put to consider the relevancy or not therefrom so as to decide to invoke the power or not therefrom any if so to what extent to permit further examination of the witness to consider, without mentioning in the order what are the questions to permit, but for to consider while evidence of the witness. It is needless to say from the very purpose and object of Order XVIII Rule 4 C.P.C of permitting chief-examination by affidavit of any witness, save those whom

party unable to secure to give affidavit, when summoned through Court to record such witness evidence by Court where not prepared to file chief affidavit as clarified by the Apex Court, the same is to avoid piece meal examination of witness in chief and reduce litigation life. It is to say there is only one chief examination by affidavit and not more than one to take by Court. It is because once the affidavit contents taken on oath by Court as chief-examination of the deponent by calling him/her to the witness box and record further evidence in chief, if any, while marking any documents among those referred in chief affidavit or otherwise and then permitting cross-examination by opposite side and any re-examination subject to permissibility. For any necessity of further chief-examination later, the question of receiving further chief by another affidavit is not at all contemplated, as the scope of Order XVIII Rule 17 referred supra as power of the Court to put any relevant questions or to permit a party to put relevant questions by calling to the witness box only and thereby the allowing of chief-affidavit on recall as not contemplated, but for to record any further examination only by the Court. It is made clear there from that there is no question of receiving second chief-examination affidavit even by recall but for to record any further examination only by the Court.

9) Having regard to the above and in the result, both the revision petitions are disposed of instead of dismissing

the petitions and giving liberty to file another application before the trial Court with a direction to give relevant questions in seal cover to Court, that gives further life to litigation, so as to sub serve the ends of justice, by directing the revision petitioners to give in a seal cover to the trial Court within one week from date of receipt of this order as to what are the relevant questions or area of the further examination, so that the trial Court can consider therefrom any necessity to recall and permit while under further examination only such of those relevant and nothing more for same process by recall of a witness is not a denovo examination, needless to say any further witness examination even only to the limited area and purpose of examination to decide. If the defendants/revision petitioners fail to obey the direction supra within the time stipulated above they are not entitled to seek extension of time or to file another application and not entitled to any more concession of this order which results in the order of lower Court therefrom holds good without any further reference to this Court.

10) Consequently, miscellaneous petitions, if any shall stand closed. No costs.

Dr. B. SIVA SANKARA RAO, J

26.08.2016

N.B.: L.R Copy to be marked

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[\[1\]](#) 2016 (3) ALD 162 (SC)

[\[2\]](#) (2011) 11 SCC 275