

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION Nos.5121 and 5122 of 2016

COMMON ORDER:

- 1) C.R.P.No.5121 of 2016 is filed, aggrieved by the order dated 19.08.2016 passed in I.A.No.637 of 2016 in O.S.No.70 of 2016 on the file of the Principal Junior Civil Judge, Punganur, wherein an application filed to re-open the matter was dismissed. C.R.P.No.5122 of 2016 is filed, aggrieved by the order dated 19.08.2016 passed in I.A.No.640 of 2016 in O.S.No.70 of 2016 on the file of the Principal Junior Civil Judge, Punganur, wherein an application filed to recall PW.1 was dismissed.
- 2) Since the issues involved in both the Civil Revision Petitions filed under Article 227 of the Constitution of India are interconnected, they are being disposed of by this common order.
- 3) The facts in issue are as under:
- 4) The respondent/plaintiff filed O.S.No.70 of 2016 seeking specific performance of an agreement of sale in respect of suit schedule property after receiving the balance sale consideration of Rs.3,000/- . During the course of trial, the petitioner/defendant filed petitions to re-open the suit and to recall PW.1. Chief affidavit of PW.1 came to be filed on 16.03.2009 and thereafter the said case is being adjourned from time to time for cross examination of PW.1. It is said that when the Court insisted

for cross examination of PW.1, learned counsel for the petitioner stated that he would cross examine PW.1 on next adjournment. On 08.05.2015 PW.1 was examined in chief and Exs.A1 to A7 are marked. On 18.06.2016 PW.1 was partly cross examined and thereafter the counsel for the petitioner took number of adjournments. On 04.07.2016 the Court posted the matter finally on a condition to complete the cross examination of PW.1 on that day but the learned counsel for the petitioner failed to cross examine PW.1. Hence, the Court treated that there was no further cross examination and as the counsel for the plaintiff reported no evidence, the same was closed. Thereafter, I.A.Nos.637 and 640 of 2016 came to be filed to re-open and recall PW.1. The respondent/ plaintiff filed counter contending that the cross examination of PW.1 was done at length on 18.06.2016 and later on the petitioner has taken several adjournments and after imposing costs also the petitioner was not evincing any interest to cross-examine PW.1. Seeing the same, the trial Court closed the evidence.

5) After considering the rival submissions made, the trial Court dismissed both the petitions. Challenging the same the present revisions came to be filed.

6) Learned counsel for the petitioner mainly contended that grave prejudice would be caused if the petitioner is denied an opportunity to cross examine PW.1. It is submitted that the case

was delayed due to absence of the Presiding Officer from 2009 to 2013 and as such seeks interference of this Court.

7) On the otherhand, learned counsel appearing for the respondent submits that though number of opportunities were given to the petitioner to cross examine PW.1 but the matter is being postponed on one pretext or the other. Having regard to the manner in which the defendant was postponing the matter and since he failed to pay the costs, left with no other option, the trial Court rejected the request to re-open the matter and recall PW.1. It is thus contended that there is no illegality or irregularity in the order passed and hence the same warrants no interference of this Court.

8) It is to be noted that chief affidavit of PW.1 was filed in the month of March, 2009. The documents came to be marked through PW.1 in the month of May, 2015. Cross examination of PW.1 in part was done on 18.06.2016. After cross examination of PW.1 the defendant's counsel requested time which was accepted. Thereafter the matter was being adjourned from time to time. The docket orders which are placed before the Court from May, 2015 show that from 18.06.2015 the matter got adjourned to 03.07.2015. On that day PW.1 was absent and on his request it was adjourned to 14.07.2015. From 14.07.2015 the matter was adjourned to 23.07.2015 at request. On 23.07.2015 the matter was simply adjourned to 28.07.2015 and from 28.07.2015 to 03.08.2015. On 03.08.2016 I.A.No.343 of 2015 was

heard and adjourned to 07.08.2015. On 07.08.2015 I.A.No.343 of 2015 was allowed and the matter was posted to 11.08.2015 for further cross of PW.1. From 11.08.2015 the matter was adjourned to different dates for cross examination of PW.1 but reasons for adjourning the matter were not mentioned in the docket orders. It was not even stated as to who is responsible for taking time. The docket orders does not indicate as to whether PW.1 was present in the Court on those dates. The next date of listing of the case was on 07.06.2016. On that day PW.1 was present and at the request of Sri K.Aravind Kumar the matter was adjourned to 27.06.2016 on payment of costs. On 27.06.2016, at request, the matter was adjourned to 04.07.2016 on payment of further costs of Rs.200/- . A reading of the docket order dated 04.07.2016 show that PW.1 was present on every date of adjournment and the counsel for the defendant was seeking adjournment for cross examination of PW.1. As the counsel for the defendant was not feeling well, he sought time for a week on 04.07.2016. Accordingly, the matter was adjourned to 18.07.2016 on payment of costs of RS.200/- . On 18.07.2016 the counsel for the defendant represented that they have filed a memo along with typed copy of letter dated 16.06.1999 seeking to secure handwriting or script of defendant on in different pages and until and unless the said memo was decided, they will not cross examine PW.1. The Court perused the memo and the letter dated 16.06.1990. As the said letter does not indicate that it relates to suit transaction, the counsel for the petitioner took an objection stating that the said

letter is a self styled since the original letter said to have been executed by plaintiff is not produced. Hence, the defendant was directed to proceed with the cross examination of PW.1, failing which the Court observed that the next step follows on costs of Rs.150/- and accordingly posted the matter to 20.07.2016. On 20.07.2016 the plaintiff was present. Though the suit was coming up for cross examination of PW.1, the defendant who was present in the Court took time. The docket proceedings show that no costs were paid by the defendant as ordered earlier. Having regard to the above, the Court below viewed that there was no justification in granting time on request of defendant. Hence, closed the plaintiff evidence and posted to 28.07.2016 for the evidence of defendant. Ultimately on 16.08.2016 I.A.'s came to be filed which were dismissed on 19.08.2016. Thereafter, the trial proceeded further with the filing of chief affidavit of DW.1.

9) In view of the above docket proceedings, learned counsel for the plaintiff strenuously contended that it was the petitioner, who was responsible for the delay in cross examination of PW.1 and as such no lenience be shown in recalling PW.1. On the other hand, learned counsel for the petitioner submits that having regard to the nature of the suit filed, an opportunity may be given to the petitioner to cross examine PW.1.

10) It is to be noted that PW.1 was cross examined in part in the month of May, 2015. The docket proceedings which are referred to above show that the matter was being adjourned for

want of cross examination of PW.1 by the counsel for the defendant.

11) The issue with regard to recalling of witness and re-opening of case came up for consideration in number of cases.

12) It has to be seen that Order XVIII Rule 17 makes it clear that the Court may at any stage of a suit recall any witness. Thus there is no embargo for the Court to recall a witness after closure of the evidence. Even after closure of the evidence of plaintiff or the defendants or of both the parties, the parties may approach the Court to reopen the case for further evidence and it is the discretion of the Court to allow any application filed under Order XVIII Rule 17 of C.P.C. However, the discretion has to be exercised having regard to the facts and circumstances of each case.

13) In *Rouf and Sons Estates (Regd.) Firm, Kadapa District and others v. Palem Mallikarjuna Reddy and others*¹ a learned Single of this Court held as under:

“Even though the petitioners have failed to assign proper reasons and substantiate the pleas raised by them by adducing any evidence, as opined by the Court below, giving one opportunity to them to adduce further evidence will help the Court to determine the issues involved in the suit in a proper and comprehensive manner.”

14) Though the docket order show that the petitioner was responsible for prolonging the matter but on some of the dates no

¹ (2012) 5 ALD 59

reasons are given while adjourning the matter. It is contended that there was no judicial officer from 2009 to 2013. Since the case is still at the stage of examination of DW.1; having regard to the judgment referred to above and taking into consideration the nature of suit, this Court is of the view that an opportunity can be given to the petitioner to cross examine PW.1.

15) Hence, the trial Court shall fix a date for appearance of PW.1, on which date the learned counsel for the defendant shall cross examine PW.1. It is also agreed upon by the petitioner herein that further adjournments will not be taken from said date. Having regard to the fact that the suit is of the year 2006, the trial Court shall dispose of the suit within a period of three to six months from the date of receipt of a copy of the order.

16) Accordingly, both the Civil Revision Petitions are allowed. There shall be no order as to costs.

17) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

09.12.2016
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