

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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C.R.P.No.293 of 2016

ORDER:

This revision is filed, under Article 227 of the Constitution of India, against the order passed by the I Additional District Judge-cum-Sessions Judge, Mahila Court, Visakhapatnam in I.A.No.915 of 2015 in O.S.No.135 of 2010 dated 12.11.2015.

The application, in I.A.No.915 of 2015, was filed under Section 151 C.P.C. to reopen the evidence of the plaintiff for adducing further evidence on his behalf. The suit in O.S.No.135 of 2010 was filed for specific performance of an agreement of sale. The petitioner-plaintiff examined himself as P.W.1, and examined the attestors of the agreement of sale as P.Ws.2 and 3. During his cross-examination, P.W.1 (the plaintiff) stated that he was not going to examine the document writer. In further cross-examination, P.W.1 also stated that he was going to examine the attestors of Ex.A.1, and he had no objection to record the cross-examination of both the witnesses at the same time.

Subsequently, the attestors of the document i.e P.Ws.2 and 3 are said to have been examined, and to have been unable to identify the signatory of the document. Thereafter, the petitioner sought to examine P.W.4, the document writer, though earlier he had stated, in cross-examination, that he would not examine him.

P.Ws.2 and 3 were cross-examined on 08.07.2015, and thereafter the matter was adjourned to 15.07.2015. From the order passed by the Court below, it is evident that neither the plaintiff nor the witnesses were present on that day, and the matter was again adjourned to 31.07.2015. As there was no representation on behalf of the plaintiff on 31.07.2015, the matter was adjourned to 07.08.2015 and as, even on that date, there was no effort to adduce evidence, the matter was closed. The present I.A. was filed on 14.08.2015 seeking reopening of the evidence on behalf of the plaintiff to enable them to examine P.W.4.

In the order under revision, the Court below recorded that, if really the petitioner was concerned about the evidence of P.W.4, he ought to have filed the affidavit evidence of P.W.4 either on 31.07.2015 or on 07.08.2015,

if he could not secure his attendance before the Court earlier; a perusal of the evidence of P.W.2 showed that he could not identify the signatory of the document as shown in the photograph; in the event, the petitioner was permitted to adduce evidence of P.W.4, there was every chance of the respondent losing valuable admission elicited during cross-examination of P.Ws.1 to 3; and, under those circumstances, he did not find any reason to reopen the petitioner's evidence, and the petitioner could not be permitted to adduce further evidence at that belated stage. The I.A. was dismissed. Aggrieved thereby, the present revision.

Sri N.Ashwani Kumar, learned counsel for the petitioner, would submit that the I.A. was adjourned from 15.07.2015 to 29.07.2015 for cross-examination; thereafter, the matter was adjourned to 07.08.2015 for further evidence; and it was, thereafter, adjourned to 14.08.2015; the evidence on behalf of the plaintiff was closed on that date; and the present application was filed on the same day.

While it does appear that the petitioner-plaintiff had stated in cross-examination that he did not intend examining the document writer, and P.Ws.2 and 3 appear to have failed to recognize the signatory of the document, these are matters which could have been examined only at the stage of final adjudication of the suit and no such finding, even *prima facie*, could have been recorded in an application filed under Section 151 C.P.C. to reopen the evidence on behalf of the plaintiff.

In the absence of any specific prohibition under the Civil Procedure Code, whereby the plaintiff would be disabled from examining P.W.4 merely because he had earlier stated in cross-examination that he did not intend to examine the said witness, I see no reason to deny the petitioner the opportunity of examining P.W.4. Whatever inferences should be drawn from the cross-examination of the petitioner-plaintiff as P.W.1, or the admissions of P.Ws.2 and 3, are matters which would be open for the Court below to consider at the final hearing of the suit.

As there appears to be a failure on the part of the petitioner herein to examine P.W.4 on three different occasions from 15.07.2015 onwards, and as the suit relates to the year 2010, I consider it appropriate to give the petitioner one more opportunity on certain terms. On condition that the

petitioner pays Rs.5,000/- (Rupees Five Thousand Only) as costs to the 1st respondent herein, within one week from today, the Court below shall fix a date on which the petitioner may examine P.W.4 by filing his affidavit in chief, and making P.W-4 available for cross-examination. Failure on the part of the petitioner, to either pay costs as aforementioned within the stipulated time, or to produce the witness on the day fixed by the Court, would enable the Court below to close his evidence, and decide the suit in accordance with law. Needless to state that the suit shall be decided by the Court below on its merits uninfluenced either by the observations in the order under revision or in the order now passed by this Court.

The C.R.P. is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of.

RAMESH RANGANATHAN, J

07th April 2016.

Note: Issue C.C. by 11.04.2016.

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Date: 07.04.2016

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