

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.5776 of 2015

ORDER :

Heard Sri Challa Dhanamjaya, learned counsel for the Revision Petitioner and Sri V.S.R.Anjaneyulu, Counsel representing Sri P.Vishnuvardhan Reddy, Counsel for 1st respondent.

2. The 1st respondent filed O.S.No.82 of 2013 on the file of I Additional District Judge, Warangal seeking damages for defamation against respondents 2 to 8 and the petitioner.

3. Petitioner and 2nd respondent filed written statement denying the suit claim. Other respondents also filed written statements denying the suit claim.

4. Issues were framed. Evidence of both sides was concluded on 15.10.2015. Thereafter, arguments were addressed and the matter was posted to 02.12.2015 for pronouncement of judgment.

5. At that stage, petitioner filed I.A.No.1032 of 2015 to re-open the trial alleging that his counsel did not inform him that he has to adduce evidence as soon as the evidence of DWs.1 and 2 in the suit was over and that he was waiting for the advocate to inform him. The petitioner prayed for an opportunity to lead evidence contending that certain documents on which petitioner seeks to rely upon were in the custody of the 2nd respondent/1st defendant. He claimed to have issued a notice under Order XII Rule 8 CPC asking the 2nd respondent to produce the said documents. Petitioner further stated that he wanted to recall PW-1 to face cross-examination by his counsel.

6. Counter affidavit was filed by the 1st respondent opposing this

application. It is contended that the petitioner was fully aware that the matter was posted for pronouncement of order on 02.12.2015, that he attended the Court on each date of hearing and was also present along with DW1 at the time of arguments and he has unnecessarily thrown mud on his counsel and blaming him for not informing him of the proceedings of the case. It is stated that defendants were given ample opportunity to adduce their evidence and at a belated stage, this application has been filed.

7. By order dt.10.12.2015 the Court below dismissed the said application. It held that evidence of both parties was closed long back and it is not in the interest of justice to reopen evidence to enable the defendants to fill-up the gaps. It also relied upon the decisions in 2005 (2) APLJ 97, 2014(1) ALD 268 and 2009(3) ALT pg.25 (SC) wherein it was held that the power to recall witness under Order XVIII Rule 17 CPC should not be invoked to fill up the lacuna in the evidence of witnesses, which was already been recorded and this can only be done to clear up an ambiguity which might have arisen during the course of examination.

8. Challenging the same, this Revision is filed.

9. Counsel for the petitioner contended that there has been collusion between the 1st respondent and respondents 2 & 3, due to which certain important documents which are in the custody of the 2nd respondent/1st defendant have not been produced and this has caused grave prejudice to him and that was why the petitioner now intends to lead evidence.

10. Such a plea has not been raised in the affidavit filed in support of I.A.No.1032 of 20115. In that application blame has been thrown on his

counsel alleging that he did not inform the petitioner that he needed to adduce evidence. Therefore, this new plea cannot be entertained at this stage.

11. Since the defendants have examined four witnesses, who are also cross-examined by the plaintiff's counsel, it cannot be said that the petitioner has been denied any opportunity to lead evidence. Petitioner, being an educated person and medical practitioner, is supposed to follow the proceedings in the suit including the manner in which the evidence has been adduced by other defendants. He cannot blame his advocate and contend that he has not been informed by the advocate of the necessity to adduce evidence.

12. It is not in dispute that this application to re-open the evidence and recall PW1 was filed after hearing the final arguments and after the suit was posted for pronouncement of judgment.

13. Therefore, I am of the opinion that the Court below was correct in holding that the plea of the petitioner cannot be accepted and the purpose of re-opening the evidence appears to be only to fill-up the lacuna in the evidence of 1st defendant/2nd respondent. Since, the petitioner himself was negligent in defending his interest in the suit, he cannot be allowed to take advantage of his own negligence. In my considered opinion, there is no error of jurisdiction in the order passed by the Court below warranting interference by this Court in exercise of its power under Article 227 of the Constitution of India.

14. Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs.

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

M.S. RAMACHANDRA RAO, J

25th January, 2016.
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