

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO
CIVIL REVISION PETITION Nos.1525 & 1527 of 2013

COMMON ORDER:

Heard both sides and perused the grounds of revisions and the impugned orders of the lower Court.

The law is very clear in this regard from the expression of the Apex Court in **Vadiraj Naggappa Vernekar (Deceased by LRs) Vs. Sharad Chand Prabhakar Gogate¹**, wherein it was held at Paragraph 16 as follows:

“16. In our view, though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said rule is to enable the Court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined. As indicated by the learned single Judge, the evidence now being sought to be introduced by recalling the witness in question, was available at the time when the affidavit of evidence of the witness was prepared and affirmed. It is not as if certain new facts have been discovered subsequently which were not within the knowledge of the applicant when the affidavit evidence was prepared. In the instant case, Sadanand Shet was shown to have been actively involved in the acquisition of the flat in question and, therefore, had knowledge of all the transactions involving such acquisition. It is obvious that only after cross-examination of the witness that certain apses in his evidence came to be noticed which impelled the appellant to file the application under Order 18 Rule 17 CPC. Such a course of action which arises out of the fact situation in this case, does not make out a case for recall of a witness after his examination has been completed. The power under the provisions of Order 18

¹ AIR 2009 SC 1604

Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.”

In **Badana Mutyalamma and Another Vs. Palli Appala**

Raju² this Court held that:

“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**³ at Para 11 referring to the earlier expressions of the Apex Court including in **K.K. Veluswamy Vs. N.Palaniswamy**⁴ (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.

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.”

² 2017 (5) ALT 69

³ 2016 (3) ALD 162 (SC)

⁴ (2011) 11 SCC 275

Having regard to the above, the position of law is very clear that unless it is the clarity required from the Court to sub serve the ends of justice, it is not to fill up the gaps in the evidence by recall of any witness much less any right of a party to ask for recall of any witness. Once such is the case, the petition to recall DW.4 by receiving the documents which are the endorsement of Tahsildar, Kotturu, dated 25.09.2012 and true copy of letter addressing by the MRO, Kotturu, to the SI of Police, Kotturu, dated 08.09.2004 and letter addressed to the Collector, Srikakulam dated 16.10.2004, no way requires to be permitted at a belated stage much less by recall of DW.4. Thereby there is nothing to interfere with the impugned orders of the lower Court.

Accordingly and in the result, both the revisions are dismissed.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 22.12.2017
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