

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.392 of 2017

ORDER:

Heard both sides.

Undisputedly, the change of advocate is not a ground to ask for recall of a witness to further cross examination much less denovo as rightly contended by the learned counsel for the respondent in supporting the order of dismissal by the lower Court. However, it is not the be all and end all, leave apart the very Order XVIII Rule 17 CPC speaks the power of the Court and not the right of the party, the procedural law is handmaid but not mistress of justice, the Court under Section 151 CPC and Section 165 of Evidence Act to sub serve the ends of justice can permit, from the insufficiency of any advocate will not prejudice the right of the party, any questions by further examination. However it is necessary to ascertain what are the further examination questions to be put to the witness. Here two contingencies that arise to meet are if in the affidavit mentions the area of further cross examination, the witness will be altered and if not disclosed the party may widen the area of cross examination. Thus to balance the same it is just to require what are the relevant questions to be put to the witness given to Court by mentioning in a sealed cover, the Court can permit only relevant questions. Thereby to sub serve the ends of justice it is just to allow the application with heavy costs instead of dismissal and subject to direction of giving in a sealed cover to the trial Court what are the questions to be put, so that what are relevant if any out of it the

Court can consider with reference to Section 136 of Evidence Act to permit only such questions.

Having regard to the above, the dismissal order of the lower Court dated 01.12.2016 in I.A.No.706 of 2016 in O.S.No.518 of 2013 is set aside and the petition is restored to the file of lower Court and the revision petitioner/defendant is directed within one week from the date of receipt of this order to pay costs of Rs.3,000/- by defendant to plaintiff or his counsel and to the trial Court to give in a sealed cover what the relevant questions that were missed if at all to permit out of those what are relevant and admissible for the Court by passing the order without disclosing what the questions but serial number of the questions if at all to permit by recalling the witness and such exercise to be completed is within one month from the date of receipt of this order. Non compliance of the above, the order of the lower Court without further reference to this Court holds good.

Accordingly and in the result, the Civil Revision Petition is disposed of.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 12.12.2017

Note: Issue C.C. by 14.12.2017

(B/o)

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