

HONOURABLE SRI JUSTICE RAJA ELANGO

CIVIL REVISION PETITION No.396 OF 2017

ORDER:

This Civil Revision Petition is filed by the petitioner – plaintiff challenging order, dated 28.11.2016, passed in I.A. No.939 of 2016 in O.S. No.417 of 2009, by the I-Additional Junior Civil Judge, Rajamahendravaram, East Godavari District, dismissing the application.

The petitioner – plaintiff filed I.A. No.939 of 2016 seeking to recall DW.1 for further cross-examination. The trial Court by the aforesaid impugned order dismissed the said application with the following observations:

“Perused the material on record and it is evident that D.W.1 is cross-examined and while the matter is coming up for cross-examination of D.W.2, the present application has been filed. It is beyond doubt to conclude that the reasons assigned by the petitioner/plaintiff in seeking to recall DW.1 for further cross examination on the ground that her counsel did not cross-examine the witness D.W.1 on documents filed by him due to inadvertence, is neither convincing nor tenable. It is not the case of the petitioner/plaintiff that she was not given opportunity to cross-examine D.W.1.”

Heard and perused the material available on record.

On a perusal of the order of the trial Court and material available on record, this Court is of the view that the observations made by the trial Court are in accordance with law and this Court is not inclined to interfere with the same.

At this stage, learned counsel for the petitioner submitted that recall of DW.1 for further cross-examination is very essential as the petitioner failed to cross-examine D.W.1 on the veracity of the document filed by him, and therefore, he requested to direct the trial

Court to fix a date for cross-examination of DW.1 and he is ready to pay the costs for appearance of the witness before the trial Court.

Considering the facts and circumstances of the case and in view of the submissions of the learned counsel for the petitioner, this Court is inclined to permit the petitioner to cross-examine DW.1 on certain terms and conditions.

Accordingly, this Civil Revision Petition is allowed setting aside order, dated 28.11.2016, passed in I.A. No.939 of 2016 in O.S. No.417 of 2009 by the I-Additional Junior Civil Judge, Rajamahendravaram, East Godavari District, and the trial Court is directed to fix a date for cross-examination of DW.1 by the petitioner subject to condition of the petitioner paying costs of Rs.3,000/- for appearance of the witness before the trial Court, upon which the petitioner is directed to cross-examine DW.1 on the date so fixed by the trial Court and in case of failure to do so, the trial Court is at liberty to proceed further in the matter. No order as to costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

RAJA ELANGO, J

March 01, 2017.
KTL

