

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION Nos.1955, 1956, 1957, 1960 and 1961
of 2017

COMMON ORDER:

CRP Nos.1955, 1956, 1957, 1960 and 1961 of 2017 are filed under Article 227 of the Constitution of India challenging the common order dated 27.3.2017 dismissing I.A. Nos.158, 160, 157, 156 and 159 of 2017 respectively in O.S. No.1584 of 2014 on the file of the Court of IV Senior Civil Judge, City Civil Court, Hyderabad.

2. I.A. No.158 of 2017 is filed under Order XIII Rule 1 of CPC seeking to receive 14 documents. I.A. No.160 of 2017 is filed under Order XVIII Rule 17 of CPC to recall P.W.1. I.A. No.157 of 2017 is filed to recall D.W.1. I.A. No.156 of 2017 is filed to reopen the defendant's side evidence. I.A. No.159 of 2017 is filed to reopen the plaintiff's side evidence.

3. The plaintiff filed all the interlocutory applications against the defendant. For the sake of convenience, the parties will hereinafter be referred to as they are arrayed in the interlocutory applications.

4. Since the impugned order is a common order arising out of the interlocutory applications in the same suit and the parties are one and the same, this court is inclined to dispose of these civil revision petitions by this common order.

5. Sri Sricharan Telaprolu, learned counsel for the petitioner strenuously submitted that (1) the trial court failed to consider that the previous counsel of the petitioner before the trial court has

not properly conducted trial, which eventually affects the rights of the petitioners; (2) the trial court failed to consider the previous counsel of the petitioner did not file the documents along with the plaint or at the time of filing chief examination affidavit of the petitioner, which fact came to the knowledge of the petitioner in the month of March, 2017, (3) if the petitions filed to recall P.W.1 and D.W.1, to elicit necessary information, are allowed, it would throw some light on the controversy involved in the suit, and (4) even if the petitions are allowed, the same may not cause any prejudice to the respondent. ***Per contra***, Sri M.R.K. Chowdary, learned senior counsel for the respondent strenuously submitted that (1) this court cannot act as an appellate court while exercising the jurisdiction under Article 227 of the Constitution of India, as the scope of the revisional jurisdiction is very limited, (2) the petitioner filed the five interlocutory applications with an ulterior motive to drag on the proceedings, and (3) there is no illegality or irregularity in the impugned order to warrant interference by this court.

6. A perusal of the record reveals that petitioner filed O.S. No.1584 of 2014 on the file of the Court of IV Senior Civil Judge, City Civil Court, Hyderabad, for eviction of the respondent from the suit schedule property i.e., Flat No.502, Shilpa Apartments, Road No.5, Banjara Hills, Hyderabad, alleging that the respondent committed default in payment of rent. The respondent filed written statement *inter alia* contending that there is no jural relationship of landlord and tenant between the petitioner and the respondent; therefore, the suit is liable to be dismissed. It is the further contention of the respondent that he purchased the suit schedule

Flat from the Builder. It is an admitted fact that Flat Nos.501 and 502 are pent houses.

7. After completion of the evidence on both the sides in the suit, the present interlocutory applications are filed by the petitioner, as referred in paragraph No.2, to reopen the plaintiff's side evidence, defendants' side evidence, to recall P.W.1 and D.W.1 and to receive the documents. The respondent filed detailed counters opposing the interlocutory applications. The trial court after affording reasonable opportunity to both parties arrived at a conclusion that the petitioner filed the Interlocutory applications to drag on the matter and, accordingly, dismissed the applications. Hence, the present revision petitions.

8. In order to appreciate the rival contentions, this court is placing reliance on the following decisions:

(1) **Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate**¹, wherein the Hon'ble apex court held at paragraph No.25 as follows:

25. 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.

(2) **K.K. Velusamy v. N. Palanisamy**², wherein the Hon'ble apex court held at paragraph No.19 as follows:

19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be

¹ (2009) 4 SCC 410

² (2011) 11 SCC 275

bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.

(3) **Bagai Construction v. Gupta Building Material Store**³,

wherein the Hon'ble apex court held at paragraph No.15 as follows:

15. After change of various provisions by way of amendment in CPC, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial court in order to overcome the lacunae in the pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still the plaintiff has not placed those bills on record. It further shows that final arguments were heard on a number of times and the judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 CPC.

(4) **A.R.K. Raju v A.V.S. Raju**⁴, wherein this court held at

paragraph No.7 as follows:

7. Order XVIII Rule 17 of the Code of Civil Procedure empowers the Court to recall any witness who has been examined at any stage of a suit to put such question to him as the Court thinks fit. Thus, the power of recalling a witness is vested in the Court primarily for seeking clarification on any of the aspects arising in the suit. In *Vadiraj Naggappa Vernekar Vs. Sharadchandra Prabhakar*

³ (2013) 14 SCC 1

⁴ 2014 (6) ALD 20 = 2015 (1) ALT 509

Gogate, (2009) 4 SCC 410, the Supreme Court has dealt with the scope of this provision. It has, inter alia, held that the main purpose of this 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, though this provision has been interpreted by the Courts to include applications to be filed by the parties for recalling of witnesses. The Supreme Court further held that this provision is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. The Supreme Court further held that the power under the provisions of Order XVIII Rule 17 C.P.C. is to be sparingly exercised in appropriate cases, and not as a general rule merely on the ground that recall and re-examination of the witness would not cause any prejudice to the parties. In the light of the above settled legal position, if the case of the respondent is examined, the applications filed by him do not deserve to be allowed.

9. Let me consider the facts of the case on hand, in the light of the above legal principles. The entire controversy, in the suit, revolves around jural relationship of landlord and tenant between the petitioner and respondent. Who is the owner of Flat No.502 has to be decided in the suit. During the course of trial, the chief examination affidavit of P.W.1 was filed on 06.1.2016 and cross-examination of P.W.1 was completed on 11.4.2016. The respondent's side evidence was commenced on 21.7.2016 and concluded by 17.10.2016. At the instance of the respondent, the Assistant City Planner was examined as C.W.1 and through whom Ex.X1 to X3 were marked, and the Law Officer of A.P. Mahesh Cooperative Bank was examined as C.W.2 and through whom Exs.X4 to X6 were marked. The petitioner filed I.A. No.531 of 2016 for appointment of advocate commissioner to measure the suit schedule property and the same was allowed by the trial court. The petitioner filed the applications to recall P.W.1 and D.W.1 on the pretext that the previous counsel of the petitioner, before the trial court, has not filed the documents handed-over to him. It is a matter of common knowledge that the plaintiff and defendant

usually file the documents in support of their claim along with the plaint and written statement, as the case may be. If the parties to the proceedings secure the documents after filing of the plaint and written statement, they may file petition under Order XIII Rule 1 of CPC requesting the court to receive the documents.

10. It is the case of the petitioner that he entrusted certain documents to his previous counsel before filing of the suit but for one reason or the other he did not file the documents along with the plaint or even at the time of filing the chief examination affidavit. The suit was filed in the year 2014. If the contention of the petitioner is accepted, he might have handed over the proposed documents to his previous counsel in the year 2014. If really that is so, nothing prevented the petitioner to enquire his previous counsel at the time of signing the plaint or at the time of signing chief examination affidavit or at least at the time of marking the documents on his behalf. The petitioner filed the petition under Order XIII Rule 1 of CPC to receive as many as 14 documents. Document Nos.1, 2, 3, 4 and 5 are subsequent to filing of the suit. In such circumstances, handing over of document Nos.1 to 5 to his counsel, at the time of filing of the suit, is unbelievable and unimaginable. Document Nos.6 to 14 are of the years from 1998 to 2004. Basing on the material available on record, *prima facie* conclusion that can be drawn is that the document Nos.6 to 14 were in the custody of the petitioner much prior to the date of filing of the suit. Except the averments made in the affidavit, there is no other convincing evidence to establish that the petitioner entrusted the proposed document Nos.6 to 14 to his previous counsel before filing of the suit. The present counsel of the petitioner before the

trial court has filed vakalat on 20.2.2017. The reasons assigned by the petitioner for non-filing of the documents within time are not cogent and convincing. If a party to the proceedings is allowed to file documents, after completion of the evidence in the suit, there is every possibility of causing prejudice to the opposite party. As rightly pointed out by the learned senior counsel for the respondent the possibility of filing the applications after going through the contents of written arguments filed on behalf of the respondent, cannot be ruled out. The court has to exercise its discretion, while considering the petitions of this nature, judiciously basing on sound principles of law. Petition under Order XIII Rule 1 of CPC cannot be allowed, if receiving of such documents would cause prejudice to the opposite party. The petitioner introduced the proposed documents pertaining to the years 1998 to 2004 after filing of the written arguments on behalf of the respondent. Viewed from any angle, it is not a fit case to receive the documents at this stage.

11. One of the contentions raised by the learned counsel for the petitioner is that the previous counsel of the petitioner did not take any objection at the time of marking of photocopies of the documents as Exs.X3 to X6. C.Ws.1 and 2 are official witnesses, who would have no interest or any semblance of interest in the subject matter of the suit. Whatever documents summoned by the court, they have produced. As observed earlier, Exs.X1 to X3 were marked through C.W.1 whereas Exs.X4 to X6 were marked through C.W.2. Cross-examination of C.W.2 was conducted on 10.2.2017. The respondent has taken a specific plea, in the counter, that the present counsel himself cross-examined C.W.2

on 10.2.2017. The trial court made the following observations in paragraph 7(e) of the common order, which reads as follows:

“The present counsel though he has not filed vakalat but this court permitted the present counsel and cross-examined C.W.2 in the presence of previous counsel and did not raise any objection for marking of documents Exs.C3 to C6 (sic, X3 to X6) and the present counsel himself seek the time for submitting the arguments.”

The above finding of the trial court negates the contention of the learned counsel for the petitioner that previous counsel of the petitioner has not taken any objection for marking photocopies of documents as Exs.X3 to X6, on which ground the petitioner seeks to recall P.W.1 and D.W.1. Making of unfounded and unwarranted comments against his own counsel, by a party to the proceedings, by itself would not automatically entitle him to file interlocutory application in order to overcome the adverse situations. The court has to consider the scope of the provision under which the application is filed and decide the same accordingly.

12. One of the grounds raised for recalling of P.W.1 is that previous counsel of the petitioner, before the trial court, was not present at the time of cross-examination of P.W.1. The petitioner failed to convince this court that how prejudice is caused to him due to non-presence of previous counsel at the time of his cross-examination as P.W.1. Filing of this type of applications, at the fag end of the suit or when the suit was reserved for judgment, to protract the proceedings as long as possible cannot be ruled out. The trial court has considered all the relevant aspects in right perspective and dismissed the applications. *Ex facie* there is no illegality or irregularity in the impugned orders passed by the trial court, which warrants interference of this court while exercising

jurisdiction under Article 227 of the Constitution of India. I see no merits in the revision petitions.

13. Hence, the civil revision petitions are dismissed. Miscellaneous petitions, if any pending in these civil revision petitions, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 21.4.2017.

YS

