

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

C.R.P.NO.562 OF 2017

O R D E R

Assailing the order dated 19.10.2016 passed by the court of Additional Senior Civil Judge, Tirupathi in I.A.No.883 of 2016 in O.S.No.466 of 2015, in rejecting the application filed by the defendant under Section 151 of C.P.C. to recall P.W.1 for the purpose of cross-examination, the present revision is filed under Article 227 of the Constitution of India.

The respondent herein is the plaintiff. He filed the suit for recovery of the amount based on a promissory note. During trial, the plaintiff was examined in chief. As the counsel for the defendant could not cross-examine him, the court below closed his evidence. For the purpose of cross-examining P.W.1, the defendant filed the present I.A. seeking his recall. By the impugned order and decree dated 19.10.2016, the trial court held that though sufficient opportunity was given to the defendant to cross-examine the witness, he failed to avail the same and further as the evidence of P.W.1 was closed, the petitioner is required to file a petition to reopen the evidence of P.W.1. It was held that without reopening the evidence, the question of recalling a witness would not arise. Accordingly, the trial court dismissed the petition. Aggrieved by the same, the present revision came to be filed.

The learned counsel appearing for the petitioner would submit that the evidence to be adduced on behalf of the plaintiff is not complete. It is urged that only the chief examination of P.W.1 is complete and evidence of P.Ws.2 and 3 is yet to be recorded. He further stated that as the defendant was

suffering from viral fever, he could not give instructions and hence his counsel could not cross-examine P.W.1. Therefore, he sought to set aside the impugned order and to give an opportunity to the defendant to cross-examine P.W.1.

On the other hand, the learned counsel for the respondent / plaintiff would submit that the impugned order, discloses that the defendant was given sufficient opportunity, but he failed to avail the same. For the purpose of cross-examination, the presence of the defendant is not required and his counsel has to cross-examine him, but he failed to do so. The learned counsel further submits that since the evidence of P.W.1 is closed, a petition seeking to reopen his evidence, is mandatory and without such an application, seeking to recall the witness, is not maintainable. Hence it is urged that trial court rightly dismissed the I.A. and the same warrants no interference.

From the material placed on record and the submissions of the learned counsel, it could be seen that the suit was for recovery of amount based on a promissory note. The suit is of the year 2015 and there is no dispute that it is coming up for the evidence of P.Ws.2 and 3. The evidence to be adduced on behalf of the plaintiff, is not complete. Therefore, as the evidence on behalf of plaintiff is incomplete, it cannot be said that the evidence on behalf of plaintiff is closed. If the evidence is closed, then the question of filing petition seeking to reopen the evidence, would arise. Therefore, having regard to the nature of the suit and the facts and circumstances of the case, I am of the considered view that cross-examination of P.W.1 is very much

essential for proper adjudication of the /is. It is well settled that a case is always required to be adjudicated on merits, rather than on technicalities. Therefore, I am inclined to give an opportunity to cross-examine P.W.1.

For the foregoing reasons, the impugned order is set aside and the I.A.No.883 of 2016 in O.S.No.466 of 2015 is allowed. The trial court shall fix a date and on the said date the counsel for the defendant shall cross-examine P.W.1. It is made clear that both the parties shall co-operate and shall not seek any further adjournment, for any purpose.

The revision petition is accordingly allowed. No costs.

Miscellaneous petitions pending if any, shall stand closed.

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C.PRAVEEN KUMAR,J

DATE: 12—04—2017

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