

THE HON' BLE DR. JUSTICE B.SIVA SANKARA RAO

C.R.P.M.P.No.5725 of 2017
IN/AND
CIVIL REVISION PETITION No.3889 OF 2017

ORDER:

This revision is filed by the petitioner/defendant, aggrieved by the judgment and decree dated 10.07.2017 passed in C.M.A.No.75 of 2016, wherein the learned Chief Judge, City Civil Court, Hyderabad, confirmed the order dated 02.09.2016 passed by the V Senior Civil Judge, City Civil Court, Hyderabad, in I.A.No.678 of 2016 in O.S.No.264 of 2010.

2. Heard both sides.

3. Wrongly or inadvertently, having filed I.A.No.678 of 2016 by the present revision petitioner as defendant in O.S.No.264 of 2010 after the defendant's evidence for recall of PW.1 under Order 18 Rule 17 and Section 151 C.P.C. and against the dismissal of said I.A. filed an appeal in C.M.A.No.75 of 2016.

4. A perusal of Order 43 C.P.C. no way provides maintainability of a miscellaneous appeal. The miscellaneous appeal as if the contest order was dismissed on merits on 10.07.2017 by the lower appellate Court, instead of looking into the matter of numbering the very appeal, as C.M.A. is not

maintainable and in that Court there is no revisional jurisdiction. It is, subsequently, the present revision is filed directly against that order dated 02.09.2016 in I.A.No.678 of 2016, no doubt with a delay condonation. Leave about for a revision under Article 227 of the Constitution of India, limitation applies or not is also a question. The petition to condone the delay in C.R.P.M.P.No.5725 of 2017 is allowed and revision is taken up.

5. Undisputedly, even from the closure of plaintiff's evidence, there is an application in I.A.No.511 of 2016 filed for recall of PW.1 and the same was dismissed, saying there is no disclosure of the area and relevancy on what, the further cross examination is required. No doubt, as per the settled expressions of the Constitution Benches of the Apex Court, unless there is an appeal remedy, an order in an interlocutory application is not a *resjudicata* for subsequent filing of fresh application from any changed facts and circumstances.

6. The contention on maintainability of I.A.No.678 of 2016 from the other side is on the ground of earlier petition is barred, from what is referred supra is not a bar. Otherwise, though earlier application is filed before evidence of the defendant with reference to the attendance register in disputing the defendant is a public employee on duty at the

relevant times and highly unbelievable of her executing the suit promissory note and on these aspects, for confronting with PW.1 by cross examination, recall is required and the earlier application's scope is thereby different to the present one.

7. Having regard to the above and to sub-serve the ends of justice, though has no inherent right including from the very wording under Order 18 Rule 17 C.P.C., but for, within the discretion of the Court if at all to permit where it is necessary, recall of any witness and that to put questions by the Court and if at all to permit any party, it is only by Court, for party cannot unless Court so permitted, the petitioner is directed within one week from today to give in a sealed cover that too only with reference to that attendance register in relation to defendant is on duty and the so called execution of promissory note is impossible, such questions which are relevant going to be put to PW.1 by recall and on giving of such questions in a sealed cover only in relation to relevancy, the trial Court shall by recall of PW.1 permit such questions to be put to the witness and such exercise to be completed within one week from the date of receipt of copy of this order by permitting further cross examination of PW.1 by defendant only with reference to the questions given in a sealed cover

and out of it only those relevant and admissible as per Section 136 of the Evidence Act that too subject to costs of Rs.2,500/- (Rupees Two thousand five hundred only) payable by the defendant to the plaintiff on or before one week from the date of receipt of copy of this order, failing which the order of the lower Court holds good.

8. Subject to the above, the Civil Revision Petition is allowed.

9. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. There shall be no order as to costs.

Date: 15.12.2017
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DR. B. SIVA SANKARA RAO, J

