

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.2033, 2073, 1972, 2264,
2304, 2305, 2289, 2290 and 2277 of 2017

COMMON ORDER:

Heard learned counsel for the petitioner and also the respondents respectively by clubbing all the nine revisions, outcome of three suits, at request for common hearing and disposal and perused the impugned orders and grounds of revisions.

Coming to the factual back ground, the three suits i.e., O.S.Nos.307, 308 and 309 of 2013 are filed by the revision petitioner/plaintiff on the file of the Senior Civil Judge, Nalgonda, for the reliefs based on contract for sale for its specific performance respectively and the defendants are contesting the same. These matters ripened almost for arguments and at this stage, plaintiff filed in all the three suits in each three applications viz., I.A.Nos.528, 529 and 530 of 2015 in O.S.No.307 of 2013, I.A.Nos.531, 532 and 533 of 2015 in O.S.No.308 of 2013 and I.A.Nos.534, 535 and 536 of 2015 in O.S.No.309 of 2013 to reopen the respective suits, to

receive the documents and for recall of PW.1 respectively under Section 151 C.P.C. and Order VII Rule 14-A C.P.C. and Order XVIII Rule 17 C.P.C. respectively. Those petitions were ended in dismissal and impugning the same, present revisions are maintained. The document to be received in the respective suits is returned cover of the notice served on the defendants before filing of the suit demanding for specific performance of the contract for sale.

The contentions of the defendants before the lower Court in opposing the petitions were that the plaintiff stated in the plaint pleadings as well as in chief affidavits that the notices were served on them, whereas in their written statements they specifically denied about the service of the said notices and it was not raised that those were returned notices. Once such is the case, the petitions cannot be allowed. Accepting the same, the lower Court dismissed all the petitions.

Order XVIII Rule 17 C.P.C. confers the power on the Court for recall of any witness for further examination and any application filed by a party is only bringing to the notice

of the Court any necessity in exercise of the judicial discretion. Leave about the inherent power of every civil Court which inheres of its very Constitution with all its elasticity to the necessity to exercise them, to sub-serve the ends of justice or to prevent the abuse of process of the Court as the case may be. Once it is the returned notice even inadvertently or otherwise mentioned as notice served and service of notice by proof not filed but for the returned cover, the lower Court should have been received the same, as one of the core contentions of there was no demand to show by the notice as demand prior to filing of the suit in answering the *lis* including of the plaintiff ever ready and willing to perform his part of contract, as one of the core considerations with reference to Section 16(c) of the Specific Relief Act, 1963.

Having regard to the above, at best by imposing costs, the lower Court should have been entertained the applications for reopen and receive the document under Order VII Rule 14-A C.P.C by reopening the evidence by recall of PW.1 to sub-serve the ends of justice.

Accordingly, all the Civil Revision Petitions are allowed, subject to costs of Rs.3,000/- (Rupees Three thousand only) in all, payable by the plaintiffs to the defendants before the lower Court and the lower Court after receipt of the notice shall permit examination of PW.1 and complete further examination of PW.1 by receiving and exhibiting the document subject to objection if any, and dispose of the suits after completion of the said process, preferably within ten days from the date of receipt of copy of this order. No order as to costs.

Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:16.06.2017
pab

