

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION Nos.3450 and 3549 of 2017

COMMON ORDER :

These Civil Revision Petitions, under Article 227 of the Constitution of India, are preferred by the petitioners/ respondent Nos.11 and 12 (defendant Nos.11 and 12) assailing the common order dated 19.06.2017 in I.A.No.176 and 177 of 2017, respectively, in O.S.No.1 of 2007 passed by the Special Judge for Trial of Cases under SCs & STs (POA) Act-cum-IV Additional District and Sessions Judge, Vizianagaram District (for brevity "the trial Court").

2. The petitioner in the said two applications in I.A.Nos.176 and 177 of 2017 in O.S.No.1 of 2007 is the plaintiff and respondent Nos.1 to 15 therein are the defendants in suit O.S.No.1 of 2007. The said applications filed under Section 151 of C.P.C., and under Order 18 Rule 17 of C.P.C., to reopen the evidence of plaintiff and to recall her for adducing evidence on her behalf, respectively, were allowed by the trial Court on payment of costs of Rs.1,000/- to the 1st defendant by the plaintiff, vide impugned common order dated 19.06.2017. Aggrieved by the said common order dated 19.06.2017 in I.A.Nos.176 and 177 of 2017 passed by the trial Court, the petitioners/defendant Nos.11 and 12 have preferred the present Civil Revision

Petitions, on the ground that the plaintiff filed the said applications after completion of evidence of P.Ws.1 and 2 on behalf of the plaintiff and D.Ws.1 and 2 on behalf of the defendants only to fill up the lacunae in her evidence and, therefore, sought for setting aside the impugned common order dated 19.06.2017 in I.A.Nos.176 and 177 of 2017 passed by the trial Court.

3. Heard Sri E.V.V.S. Ravi Kumar, learned counsel for the petitioners/defendant Nos.11 and 12, at the admission stage, and perused the impugned common order dated 19.06.2017, including the material available on record.

4. Learned counsel for the petitioners/defendant Nos.11 and 12, mainly contended that the evidence of P.W.1 was closed and on behalf of the defendants, D.W.1 was examined and, therefore, the question of examining the plaintiff again after giving several opportunities does not arise and the plaintiff is not entitled for recall for her cross-examination and that the impugned order dated 19.06.2017 passed by the trial Court allowing the applications in I.A.Nos.176 and 177 of 2017 in O.S.No.1 of 2007 is not in accordance with law and the same is liable to be set aside.

5. In support of his contention, learned counsel for the petitioners/defendant Nos.11 and 12 relied upon a decision of the Apex Court in VADIRAJ NAGGAPPA VERNEKAR v.

SHARADCHANDRA PRABHAKAR GOGATE¹ and submits that Order 18 Rule 17 of C.P.C. is to be sparingly exercised in appropriate cases and merely on the ground that no prejudice would be caused to the opposite party, the witnesses cannot be recalled for re-examination.

6. On the other hand, learned counsel for the 1st respondent/plaintiff submits that the trial Court has considered the facts and circumstances of the case in proper perspective and rightly allowed the applications.

7. It is pertinent to note that P.W.1 was examined in chief and her evidence was closed. Thereafter, D.W.1 was examined in chief and also cross-examined on behalf of the defendants. Later, evidence affidavit of D.W.2 was filed. As P.W.1 was not present, she could not be cross-examined. Therefore, the plaintiff filed the above interlocutory applications to reopen her evidence and to recall her for adducing evidence on her behalf. The trial Court has rightly allowed the applications filed by respondent No.1/plaintiff in order to afford her an opportunity for being cross-examined by the defendants. Therefore, I do not see any valid reason or ground to interfere with the impugned common order dated 19.06.2017 passed by the trial Court.

¹ (2009) 4 SCC 410

8. In this regard, it is appropriate to refer to para-31 of the judgment in NAGGAPPA VERNEKAR's case (supra), wherein the Apex Court observed as under:

“Some of the principles akin to Order 47 CPC may be applied when a party makes an application under the provisions of Order 18 Rule 17 CPC, but it is ultimately within the Court's discretion, if it deems fit, to allow such an application.”

9. Further, in the impugned order, the trial Court observed as follows:

“..... It is true that as a matter of right a party cannot claim to recall. But in the present case there are latches on the side of both parties and also some inadvertent mistakes in maintaining the docket by the Court, as such, in my opinion the petitioner/plaintiff has to be given a fair chance to contest her case and to face the cross-examination by the defendants. Since there was inordinate delay because she did not take initiation in proceeding with her case, and caused inconvenience and delay in proceeding with the suit, she should compensate other side. Hence, she may be permitted to get ready for her cross-examination but conditionally on payment of costs of Rs.1,000/- to the counsel for 1st defendant and she shall get ready for cross whenever called by the Court without fail.”

10. From the above, it is obvious that the trial Court has given cogent and consistent reasons for allowing the applications filed by respondent No.1/plaintiff to reopen her evidence for her cross-examination by the defendants. No doubt, the plaintiff could not be present for cross-examination and, therefore, the trial Court has properly considered that fact and intended to give an opportunity to

the plaintiff and accordingly allowed the applications filed by her. The order passed by the trial Court in giving opportunity to the plaintiff to appear before the Court and get her cross-examined by the defendants would not in any way defeat the rights of the defendants and it does not amount to filling up the lacunas in the case of the plaintiff. Therefore, there are no valid grounds to interfere with the order passed by the trial Court.

11. For the aforesaid reasons, these Civil Revision Petitions are devoid of merit and the same are accordingly dismissed, at the admission stage, with a direction to respondent No.1/plaintiff to appear before the trial Court on the date fixed by it for her cross-examination and the defendants are directed to proceed with the trial.

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

GUDISEVA SHYAM PRASAD, J

22.09.2017.

Msr

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION Nos.3450 and 3549 of 2017



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Msr