

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.4539 OF 2017

ORDER:

The civil revision petition is filed questioning the order dated 17.08.2017, passed by the I Additional Senior Civil Judge, Nellore in I.A.No.500 of 2017 in O.S.No.320 of 2005, wherein and whereby the application filed by the petitioner-plaintiff under Order 18 Rule 17 read with Section 151 C.P.C seeking to recall the evidence of D.W.1 for further cross-examination, was dismissed.

It is the case of the petitioner that the suit was filed by the petitioner plaintiff for declaration, recovery of possession, damages with future interest and for future damages. The suit is at the stage of arguments. At that stage, the impugned IA was filed stating "while cross-examining the D.W.1 due to oversight and by mistake I could not elicit the important points from D.W.1 which are very essential to prove my case in the above suit. There are no wilful latches or negligence in not cross-examining the D.W.1 relating to the above said aspects at the time of his cross-examination."

A detailed counter-affidavit is filed by the respondents stating that the evidence of the D.W.1 was closed on 8.2.2017 itself and a detailed cross-examination was done on 12.9.2016 and once again by recalled the witness by an order dated 7.8.2017 passed by the Court below in I.A.No.434 of 2017 for making the documents and again on 9.8.2017 and 21.8.2017.

The Court below after considering the material available on record did not permit the reopening of the suit as the suit was at the stage of arguments.

As can be seen from the extracted portion, what the petitioner meant was that the petitioner could not elicit certain important information from the D.W.1 in cross-examination by oversight and by mistake (wrongly typed as I could elicit instead of I could not elicit). As it is well settled that the said reasoning is admittedly a reasoning which is impermissible in law for recalling the witness. As there being no illegality in the order passed by the Court below, this Court can not interfere with the impugned order.

However, the learned counsel for the petitioner vehemently contended that on account of the pendency of the civil revision petition, the petitioner could not advance the arguments and submits that an opportunity may be given to the petitioner-plaintiff to submit the arguments in the suit.

In those circumstances, the civil revision petition is disposed of directing the Court below to permit the petitioner to submit the arguments in the suit by the next date of hearing. However, considering the fact that the suit is of the year 2005, it shall be the duty of the petitioner to proceed with the arguments in terms of the guidelines fixed by the Court below without seeking any adjournments. No order as to costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

15th September, 2017
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Date:15.09.2017

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