

HON' BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.234 of 2017

ORDER:

This revision petition, under Article 227 of the Constitution of India, is filed challenging the orders dated 09.12.2016 in I.A.No.534 of 2016 in O.S.No.279 of 2014 on the file of the Court of II Senior Civil Judge, City Civil Court, Hyderabad.

Heard the learned counsel for both the parties.

A perusal of the record reveals that respondents 1 and 2 herein have filed a suit O.S.No.279 of 2014 on the file of the Court of II Senior Civil Judge, City Civil Court, Hyderabad, against the petitioner and third respondent seeking a direction to the petitioner herein and another to vacate the suit schedule property and hand over the same to the respondents 1 and 2. The petitioner herein filed I.A.No.534 of 2016 to recall P.W.1 for further cross-examination. The trial Court after affording a reasonable opportunity to both parties dismissed the petition. Hence the revision.

It is the contention of the learned counsel for respondents 1 and 2 that the petitioner on one pretext or other postponing the cross-examination of P.W.1. Learned counsel for the petitioner submitted even if one more opportunity is given to petitioner for cross-examination of P.W.1, no prejudice would be caused to respondents 1 and 2.

A perusal of the record reveals that the chief examination affidavit of P.W.1 was filed on 17.08.2015. After taking several adjournments, the petitioner cross-examined P.W.1 in part. In spite of the conditional order, the petitioner did not choose to cross-examine the witness. Having no other alternative, the trial Court closed the evidence

on plaintiffs' side. A perusal of the record further reveals that the petitioner herein filed his chief-examination affidavit before the trial Court as D.W.1. At that stage, the present petition is filed to recall P.W.1 for the purpose of cross-examination.

There is a serious dispute between the parties with regard to the ownership of suit schedule property. The very purpose of cross-examination of the witness is to elicit the truth. If a party to the proceedings is not permitted to cross-examine the witness, more particularly party to the suit, it may cause prejudice to the opposite party. That does not mean a party to the proceedings is entitled to take adjournment on one pretext or other without cross-examining the witness. A perusal of the record clearly reveals that there are laches on the part of the petitioner in cross-examining P.W.1. A perusal of the record further reveals that the trial Court has given a reasonable opportunity to the petitioner herein to cross-examine P.W.1.

Taking into consideration the facts and circumstances of the case and also the prejudice likely to be caused to the petitioner if he is not permitted to cross-examine P.W.1 further, this Court is inclined to give one opportunity to the petitioner to cross-examine P.W.1.

At the time of arguments, both counsel with one voice submitted that the case is posted to 24.03.2017. Both counsel assured that they will inform to the trial Court about the orders passed by this Court.

Having regard to the facts and circumstances of the case, the present petition is allowed setting aside the order dated 09.12.2016 in I.A.No.534 of 2016 in O.S.No.279 of 2014 on the file of the Court of II Senior Civil Judge, City Civil Court, at Hyderabad. Consequently,

I.A.No.534 of 2016 is allowed. The petitioner and the third respondent are further directed to complete the cross-examination of P.W.1, under any circumstances, on or before 31.03.2017. The trial Court is directed to dispose of the matter within six months from the date of receipt of copy of this order. Miscellaneous Petitions pending, if any, shall stand closed.

23rd March 2017.
Pns

T.SUNIL CHOWDARY, J

