

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION Nos.2723 AND 2649 OF 2017

COMMON ORDER:

C.R.P.Nos.2723 of 2017 and 2649 of 2017 are arising out of the orders dated 28.03.2017 in I.A.Nos.311 of 2017 and 312 of 2017 respectively in O.S.No.435 of 2015 on the file of the Senior Civil Judge, Vizianagaram.

The petitioner is the defendant in O.S.No.435 of 2015. The respondent is the plaintiff, who filed the suit for recovery of money. The order of the trial Court reveals that the plaintiff's evidence was closed on 31.08.2016. After six months, the defendant filed I.A.No.1111 of 2016 seeking permission to reopen the matter and also filed I.A.No.1112 of 2016 to recall P.W.1 for further cross-examination and both the applications were dismissed on 07.12.2016 for non-prosecution. The defendant again filed I.A.Nos.17 of 2017 and 16 of 2017 for setting aside the default orders passed in I.A.Nos.1111 of 2016 and 1112 of 2016, but the applications were also dismissed on 02.03.2017 by a common order.

Heard Sri V.K.Naidu, learned counsel for the petitioner. Notice was served on the respondent but none appeared on his behalf.

C.R.P.No.2723 of 2017 is filed by the petitioner/defendant seeking to reopen the suit for adducing his evidence. It is pertinent to note that the order passed by the trial Court reveals that the defendant did not adduce evidence in spite of giving several opportunities. It is also obvious that several petitions have been filed one after the other to reopen the matter and for recalling

plaintiff for further cross-examination but the petitions were dismissed by the trial Court after four months of filing the petitions and posted the matter for arguments.

On perusal of the order passed by the trial Court, it is obvious that the trial Court had taken four months time to pass orders in interlocutory applications and thereafter did not even permit the defendant to adduce his evidence in spite of filing application seeking permission for adducing evidence.

In view of the facts and circumstances of the case, the trial Court ought to have given opportunity to defendant with some conditions to adduce evidence. In case if defendant's evidence is closed, the rights of the defendant would be prejudiced.

Considering the facts and circumstances of the case, the order passed by the trial Court is set aside. The trial Court is directed to give an opportunity to the defendant to adduce his evidence. The defendant is directed to file his list of witnesses and adduce evidence on his side on the date fixed by the trial Court. The trial Court shall complete the recording of evidence within two weeks from the date of receipt of a copy of this order.

With these observations, C.R.P.No.2723 of 2017 is allowed. Consequently, C.R.P.No.2649 of 2017, which is filed for receiving of documents on behalf of defendant, is also allowed.

The Miscellaneous Petitions, if any, pending in these petitions shall stand closed.

GUDISEVA SHYAM PRASAD,J

Date : 14.07.2017
ssp