

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI
CIVIL REVISION PETITION Nos.5409 AND 5422 OF 2017

COMMON ORDER:

These two revisions, under Article 227 of the Constitution of India, by the unsuccessful defendant No.2 are directed against two separate orders, dated 08.09.2017, of the learned IV Junior Civil Judge, City Civil Court, Hyderabad, passed in I.A.Nos.314 and 315 of 2017 in O.S.No.1844 of 2012 filed for reopening the evidence and recalling PW1 for cross-examination on behalf of the petitioner – defendant No.2.

2. I have heard the submissions of the learned counsel for petitioner – defendant No.2 in both the revisions. I have perused the material record.

3. The facts discernable from the submissions and material record are as follows:

“In a suit for perpetual injunction in respect of the property situated at Jubilee Hills, after examination of PW1, sufficient adjournments were granted to the defendants for cross-examination of PW1 and the matter was posted to 17.07.2017. It appears that 17.07.2017 was later declared as holiday; hence, the matter was called on the next day i.e., 18.07.2017 for cross-examination of PW1. However, as there was no representation for defendants 1 and 2 and cross-examination of PW1 was not done, the trial Court recorded cross-examination of PW1 as ‘Nil’. More than a month thereafter, defendant No.2 filed the present Interlocutory Applications on 23.08.2017. However, the trial Court

dismissed the petitions by the orders impugned in these two revisions by observing that the petitions are belatedly filed and that though sufficient opportunities were given to the defendants to cross-examine PW1, the same were not availed.”

4. Learned counsel for the petitioner – defendant No.2, while reiterating the chronological events would submit as follows:

“The suit is in respect of a valuable immovable property; and, the relief sought in the suit is to restrain the defendants from interfering with the peaceful possession and lawful business activities of distribution of fast moving consumer goods of the plaintiff from the suit schedule premises and for costs. Therefore, valuable rights of the defendants are at stake. On, 17.07.2017 being declared as a holiday, the trial Court called the instant matter on the next day i.e., on 18.07.2017 for cross examination of PW1; and hence, the counsel for the 2nd defendant failed to take note of the posting of the suit to the very next day and get ready for cross examination of PW1. In the circumstances, 2nd defendant is not at fault and there are no wilful laches on his part; and, hence, an opportunity may be given to the 2nd defendant to cross-examine PW1. Else, the 2nd defendant would suffer an irreparable loss.”

5. Learned counsel would further submit that defendant No.2 is prepared to cross-examine PW1 on any date fixed by this Court and he is also prepared to abide by any condition that may be imposed by this Court.

6. Having regard to the facts and submissions and as the matter is still pending before the trial Court and as this Court is of

the considered view that ends of justice would be met if an opportunity is given to defendant No.2 to cross-examine PW1, this Court finds that there is acceptable merit in the requests of the 2nd defendant. However, to offset the hardship that may be caused to respondent No.1 - plaintiff on account of delay in disposal of the suit, this Court is of the considered view that the revisions can be allowed subject to heavy terms.

7. In the result, the revision petitions are allowed and the impugned orders in the two revision petitions are set aside. Consequently, I.A.Nos.314 and 315 of 2017 in O.S.No.1844 of 2012 on the file of IV Junior Civil Judge, City Civil Court, Hyderabad, are allowed, subject to condition of payment of costs of Rs.5,000/- (Rupees five thousand only) by the petitioner - defendant No.2 to respondent No.1 - plaintiff within two weeks from the date of receipt of a copy of this order. It is made clear that the costs imposed shall either be paid to respondent No.1 - plaintiff through the counsel on record before the trial Court or shall be deposited to the credit of the suit within the time aforestated, if the said learned counsel refuses to receive the said costs. On failure to do so, the orders impugned in the revisions shall stand revived and the aforestated Interlocutory Applications shall stand dismissed. On payment or deposit of costs as directed, the trial Court shall fix an early date for cross-examination of PW1 by the learned counsel for the 2nd defendant, as per the convenience of the counsel and the Court; and on such date, as may be fixed by the trial Court, the learned counsel for the 2nd defendant shall cross-examine PW1 and complete his cross-examination on the same day, without fail.

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

There shall be no order as to costs.

M.SEETHARAMA MURTI, J

October 20, 2017
MD

