

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.1170 and 1288 of 2011

COMMON ORDER:

These two Civil Revision Petitions, under Article 227 of the Constitution of India, are filed by the petitioners challenging the Orders dt. 03.12.2010 in I.A.No.450 and 451 of 2010 in O.S.No.79 of 2007 passed by VIII Additional Senior Civil Judge (FTC), City Civil Court at Hyderabad, dismissing the petitions filed for reopen and recall of Dw.1 for further cross examination.

The Revision Petitioners filed I.A.No.450 and 451 of 2010 before the trial Court for reopen of the case and recall of Dw.1 for further cross examination, alleging that the petitioners filed a suit for eviction and recovery of arrears of rent and as the original owner/first respondent died, respondent No.3 came on record by filing an application to implead her and later she contested the matter by filing Written Statement on 21.01.2009. She came on record as a legatee having succeeded the property after the death of first respondent and thereby she is entitled to continue the suit proceedings. However, she also filed a suit in O.S.No.831 of 2009 on 16.09.2009 for correction of entries in the municipal records, based on the Will. Therefore, the Notice in the said suit was received subsequent to examination of Dw.1 and after the receipt of the summons in the suit, the witness is required to be cross examined further with reference to allegations made in the plaint in O.S.No.831 of 2009 and therefore, they sought for reopen of evidence and recall of Dw.1, but the trial Court dismissed the petitions on the ground that the petitioners did not disclose

the details as to when he received the notice in O.S.No.831 of 2009 and on other grounds.

Challenging the Orders dt.03.12.2010 in I.A.No.450 and 451 of 2010 in O.S.No.79 of 2007, the present Revision Petitions are filed reiterating the grounds urged before the trial Court while contending that the trial Court did not consider the purpose for which Dw.1 is sought to be recalled and in fact no prejudice would be caused to Dw.1 even if the witness is recalled and on the other hand, it would help to the Court to decide the real controversy between the parties, but the trial Court erroneously passed orders under challenge.

During hearing, Sri J. Venkateswara Reddy, learned counsel for the revision petitioners would contend that the witness can be recalled at any stage and in view of the receipt of the summons in O.S.No.831 of 2009, a necessity had arisen to cross examine the witness further, as she sought direction to correct the entries in the municipal records based on the Will and it is a subject matter of the said suit. But, the trial Court did not consider the scope of the Court under Order 18 Rule 17 CPC and dismissed the petition erroneously and he placed reliance on a judgment reported in ***Badana Mutyalamma and another v. Palli Appala Raju***¹.

Learned counsel for the respondents supported the order in all respects while contending that there is no opportunity to the respondents to divulge the information regarding filing of the suit in O.S.No.831 of 2009 as the respondents filed Written Statement on 21.01.2009, whereas, the suit O.S.No.831 of 2009 was filed on 16.09.2009 i.e., 9 months subsequent to

¹ 2016(6) ALD 510

filing of Written Statement. Therefore, non-disclosure of the suit in the Written Statement is not a ground to reopen the evidence and recall the witness for the purpose of further cross examination and prayed to dismiss the petition.

There is no dispute regarding the facts i.e., filing of the suit and probate proceedings before the Court and dismissal of the probate proceedings, filing of an appeal, which is pending now before the Court. But the reason for reopen and recall is that the respondents suppressed the factum of filing the suit in O.S.No.831 of 2009 before the trial Court for correction of entries in municipal records. Apparently, it is not a just or reasonable cause for the reason that the respondents filed Written Statement on 21.01.2009 and after more than eight months, the respondents filed O.S.No.831 of 2009 for the relief of correction of entries in municipal records. In such a case, disclosure of the information about filing of the suit in the Written Statement, which was filed on 21.01.2009, does not arise and on the other hand she claimed right and title over the property based on the Will, which she claimed in the Written Statement. She also disclosed about filing of probate proceedings and even the petitioner himself admitted the same in the pleadings before the trial Court. Therefore, respondent No.3 did not set up any different case than what the petitioners pleaded in their plaint. The basis to file a suit in O.S.No.831 of 2009 by the respondent No.3 is the Will which she disclosed in the Written Statement. Therefore, the respondents are not guilty of suppression of any fact. Hence, on this ground, the witness cannot be recalled by reopening the evidence of defendants.

Undisputedly, the suit is posted for arguments and at the stage of arguments, the present petitions were filed before the trial Court for reopen and recall of Dw.1 for further cross examination.

A bare reading of Order 18 Rule 17 CPC, the Court can direct the petitioners to recall a witness at any stage of the proceedings, but certain restrictions are imposed by the Apex Court to exercise the power under Order 18 Rule 17 CPC.

In **Vadiraj Naggappa Vernekar**², the Supreme Court held as follows:

“In the absence of any provision providing for reopening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required under Section 151, subject to its limitations, can be invoked in appropriate cases to reopen the evidence and/or recall witnesses for further examination. If there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under Section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose. (paras 12 and 14)

The need for the court to act in a manner to achieve the ends of justice (subject to the need to comply with the law) does not end when arguments are heard and judgment is reserved. If there is abuse of the process of the court, or if interests of justice require the court to do something or take note of something, the discretion to do those things does not disappear merely because the arguments are heard, either fully or partly. The convention that no application should be entertained once the trial or hearing is concluded and the case is reserved for judgment is a sound rule, but not a straitjacket formula. There can always be exceptions in exceptional or extra-ordinary circumstances, to meet the ends of justice and to prevent abuse of process of court, subject to the limitation recognized with reference to exercise of power under section 151 of the Code. Be that as it may. In this case, the applications were made before the conclusion of the arguments.” (para 15)

This inherent power of the court is not affected by the express power conferred upon the court under Order 18

² (2009) 4 SCC 410

Rule 17 of the Code to recall any witness to enable the Court to put such question to elicit any clarifications. The power to recall any witness under Order 17 Rule 17 can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any issue or doubt it may have in regard to the evidence led by the parties by recalling any witness so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions. However, this power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. Order 18 Rule 17 is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. (paras 11, 9 and 10).”

In the later judgment of the Apex Court in **Gayatri v M. Girish**³, the Apex Court relied on **Vadiraj Naggappa Vernekar**² case, referred supra, highlighted the responsibility of the counsel appearing in the suits before the Court while placing reliance on **Noor Mohammed v. Jethanand**⁴ commenting on the delay caused due to dilatory tactics adopted by the parties and the Court was compelled to say that:

“In a democratic set-up, intrinsic and embedded faith in the adjudicatory system is of seminal and pivotal concern. Delay gradually declines the citizenry faith in the system. It is the faith and faith alone that keeps the system alive. It provides oxygen constantly. Fragmentation of faith has the effect-potentiality to bring in a reasoned verdict from a temperate Judge but does not intend to and, rightly so, to guillotine much of time at the altar of reasons. Timely delivery of justice keeps the faith ingrained and establishes the sustained stability. Access to speedy justice is democracy and such a right is not only the creation of law but also a natural right. This right can be fully ripened by the requisite commitment of all concerned with the system. It cannot be regarded as a facet of Utopianism because such a thought is likely to make the right a mirage losing the centrality of purpose. Therefore, whoever has a role to play in the justice-dispensation system cannot be allowed to remotely conceive of a casual approach.

And, again:

Thus, from the aforesaid, it is clear as day that everyone involved in the system of dispensation of justice has to inspire the confidence of the common man in the effectiveness of the judicial system. Sustenance of faith has to be treated as spinal sans sympathy or indulgence. If

³ (2016(3) CLJ (SC) 89)

⁴ (2013) 5 SCC 202

someone considers the task to be Herculean, the same has to be performed with solemnity, for faith is the 'elan vital' of our system."

In all the three judgments referred supra, the question came up for consideration before Apex Court is that as to when a witness can be recalled by exercising discretion under Order XVIII Rule 17.

In **Bagai Construction through its Proprietor Lalit Bagai v. Gupta Building Material Store**⁵, where the Apex Court again highlighted the power of Court under Order XVIII Rule 17 and power under Section 151 C.P.C to reopen the case by recalling the witness by filing an application at the belated stage of the suit. More particularly, when the matter is posted for judgment and held as follows:

"The perusal of the materials placed by the Plaintiff which are intended to be marked as bills have already been mentioned by the Plaintiff in its statement of account but the original bills have not been placed on record by the Plaintiff till the date of filing of such application. It is further seen that during the entire trial, those documents have remained in exclusive possession of the Plaintiff but for the reasons known to it, still the Plaintiff has not placed these bills on record. In such circumstance, as rightly observed by the trial Court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of judgment, we are of the view that the Plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him. As rightly observed by the trial Court, there is no acceptable reason or cause which has been shown by the Plaintiff as to why these documents were not placed on record by the Plaintiff during the entire trial. Unfortunately, the High Court taking note of the words "at any stage" occurring in Order XVIII Rule 17 casually set aside the order of the trial Court, allowed those applications and permitted the Plaintiff to place on record certain bills and also granted permission to recall PW-1 to prove those bills. Though power Under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of the court and Court can exercise its discretion to permit reopening of evidence or recalling of witness for further examination/cross-examination after evidence led by the parties, in the light of the information as shown in the order of the trial Court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 of Code of Civil Procedure, the Plaintiff cannot be permitted.

After change of various provisions by way of amendment in the Code of Civil Procedure, it is desirable that the recording of evidence should be continuous and followed by

⁵ (2013) 14 SCC 1

arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the Plaintiff has filed those two applications before the trial Court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the Plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the Plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the Plaintiff, still Plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the Plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 Code of Civil Procedure.”

In view of the law declared by the Apex Court, it is for the petitioners to establish the reason satisfying the Court to reopen the evidence by recalling the witness. But, here, the petitioners invented a cause, which is not legally sustainable, for the reason that there is no possibility for her to disclose about filing of suit in Written Statement, which was filed more than eight months later. Therefore, the petitioners failed to satisfy the Court to exercise the power under Order 18 Rule 17 CPC to reopen the evidence by recalling the witness. Though the learned counsel for the petitioners relied on a judgment of this Court reported in *Badana Mutyalamma's* case, it is of no assistance and on the other hand, it is against the case of the petitioners on different aspects. Therefore, based on the principle laid down in the above judgment, the Court cannot reopen the case and to recall Dw.1 for further cross examination. On the other hand, the trial Court, after recording specific reasons, dismissed the petition and as I find no merits warranting interference of this Court exercising

power under Article 227 of the Constitution of India and consequently, the petitions are deserved to be dismissed.

Accordingly, these two Civil Revision Petitions are dismissed.

As a sequel, miscellaneous petitions, if any, pending in these petitions, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 13-06-2017.
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