

THE HON' BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITIONs No.4140 of 2013 & 4395 of 2016

COMMON ORDER:

These revision petitions are filed by the petitioner under Article 227 of the Constitution of India challenging the orders in I.A.Nos.180 of 2013 and 179 of 2013 respectively in R.C.No.311 of 2010 on the file of the Court of I Additional Rent Controller, City Small Causes Court, Hyderabad.

Heard both the counsel.

The contention of the learned counsel for the petitioner is three fold:

1. The trial Court failed to consider the scope of Section 7(5) and 7(6) of A.P.Buildings (Lease, Rent and Eviction) Control Order and dismissed the petitions on erroneous grounds.
2. He further submitted that the trial Court failed to consider that the previous counsel of the petitioner did not produce the documents at the time of chief examination of R.W.1;
3. The findings recorded by the trial Court are not sustainable either on facts or in law.

Per contra, learned counsel for the respondent submitted that the present petitions are filed with an ulterior motive to drag on the proceedings. He further submitted that there is no illegality or irregularity in the orders of the trial Court.

A perusal of the record reveals that the respondent herein filed R.C.C.No.311 of 2010 on the file of the Court of I Additional Rent Controller, City Small Causes Court, Hyderabad, against the petitioner for eviction on the ground of willful default in payment of rent. The petitioner herein has taken a specific plea that the respondent is not the owner of the property in question. After examination of R.W.1, the petitioner filed the petitions under Order 18 Rule 17 read with Section 151 CPC and under Section 7(5) and 7(6) of Rent Control Act to receive the documents and to recall R.W.1.

I have carefully scanned the affidavits filed in support of the petitions. As per the averments made in the affidavits, the previous counsel of the petitioner herein did not choose to file depositions and other relevant documents, i.e. legal notices along with the chief-examination affidavit of R.W.1. A perusal of the record reveals that R.W.1's chief-examination was filed on 12.10.2012, whereas, the petitioner herein had obtained depositions of P.Ws.1 to 8 in C.C.No.706 of 2009 on 12.02.2013. It is not in dispute that the petitioner herein obtained the documents on 12.10.2013. In such circumstances, filing of these documents along with the chief examination affidavit of R.W.1 on 12.10.2012 is highly improbable and unbelievable. The contention of the learned counsel for the petitioner that the petitioner's previous counsel has not filed the documents before the trial Court is misconceived. If this type of contention is accepted, certainly it may leads to far reaching consequences. The legal notice was

issued on 31.12.2012. The parties to the proceedings are under the impression that the courts simply allow the recall petitions. While considering this type of petitions, the Court has to consider whether allowing of such applications will cause prejudice to opposite party or not. It is not uncommon to produce some documents after cross-examination of the witnesses with an ulterior motive to fill up the lacunaes. If the Court feels that the documents are filed to fill up the lacunas of the proceedings, the court ought not to have allowed the same.

To substantiate the arguments, learned counsel for the petitioner has drawn the attention of this Court to the decision in *VADIRAJ NAGGAPPA VERNEKAR (DECEASED BY L. Rs.) v. SHARAD CHAND PRABHAKAR GOGATE*¹, wherein it was held at Paragraph 16 as follows:

“16. In our view, though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said rule is to enable the Court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined. As indicated by the learned single Judge, the evidence now being sought to be introduced by recalling the witness in question, was available at the time when the affidavit of evidence of the witness was prepared and affirmed. It is not as if certain new facts have been discovered subsequently which were not within the knowledge of the applicant when the affidavit evidence was prepared. In the instant case,

¹ AIR 2009 SUPREME COURT 1604

Sadanand Shet was shown to have been actively involved in the acquisition of the flat in question and, therefore, had knowledge of all the transactions involving such acquisition. It is obvious that only after cross-examination of the witness that certain apses in his evidence came to be noticed which impelled the appellant to file the application under Order 18 Rule 17 CPC. Such a course of action which arises out of the fact situation in this case, does not make out a case for recall of a witness after his examination has been completed. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.”

The facts of the case on hand are almost identical to the facts of the case cited supra. The trial Court assigned reasons much less cogent and valid reasons while dismissing the petitions. The findings recorded by the trial Court were supported by the material available on record. I am fully endorsing with the findings recorded by the Court below. This Court shall not lightly interfere with the discretionary orders passed by the court below.

Having regard to the facts and circumstances of the case and also the principles enunciated in the case cited supra, I am of the considered view that it is not a fit case to allow the revision petitions.

Accordingly, the Civil Revision Petitions are dismissed. As a sequel, the miscellaneous petitions, pending if any, shall stand closed.

T.SUNIL CHOWDARY, J

February 1, 2017.
Pns

