

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.2415 OF 2017

O R D E R

By order dated 10.04.2017 passed in I.A.No.243 of 2017 in FCOP No.1131 of 2014, the learned Judge, Family Court, Ranga Reddy District at L.B.Nagar, disallowed the plea of the respondent in the said O.P. under Order 18 Rule 17 CPC to reopen the evidence of P.W.1 to enable him to further cross-examine her. Aggrieved thereby, the respondent in the O.P. is before this Court.

Notice having been served, the petitioner in the O.P. entered appearance through learned counsel.

Heard Sri Peddada Narasimha Rao, learned counsel for the petitioner-respondent, and Sri Bommagani Prabhakar, learned counsel for the respondent-petitioner.

FCOP No.1131 of 2014 was filed for dissolution of the marriage between the parties by way of a decree of divorce; cancellation of the marriage certificate bearing No.32/2009 dated 05.08.2009; and for permanent alimony of Rs.50,00,000/-. This petition was filed by the wife under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955. By way of the subject I.A., the husband sought recall of P.W.1, the wife, for the purpose of further cross-examination. In the affidavit filed in support thereof, he stated that on 09.01.2017, his counsel conducted cross-examination of P.W.1 in part and that it was adjourned to 18.02.2017 for further cross-examination. He claimed that his counsel fell sick and was undergoing medical treatment and therefore failed to complete the cross-examination. He further stated that on 18.02.2017, the trial Court closed the cross-examination of P.W.1 owing to the absence of his counsel and posted the matter for

cross-examination of other witnesses of the petitioner. As there was no possibility of his counsel conducting such cross-examination, he engaged another Advocate to proceed with the case on his behalf. He claimed that P.W.1 was the main witness, being the petitioner, and her further cross-examination was required so as to protect his interest. He asserted that there were no willful laches on his part in completing the cross-examination of P.W.1 and prayed that her evidence may be reopened and that she may be re-called so to enable him to further cross-examine her.

No counter was filed by the wife opposing the plea. However, the Family Court, upon perusal of the record, found that the affidavit of P.W.1 in lieu of chief-examination was filed on 18.07.2016 and the matter was adjourned thereafter from time to time till 30.12.2016. On the said date also, the matter was adjourned to 09.01.2017 on the request of the counsel for the husband for cross-examination of P.W.1 on payment of costs of Rs.1,000/-. On 09.01.2017, the cross-examination of P.W.1 was conducted and re-examination was recorded as NIL. The matter was then posted to 18.02.2017 for further evidence of the wife. The affidavits in lieu of chief-examination of P.Ws.2 to 4 were filed on 28.02.2017. P.Ws.2 and 3 were cross-examined on 08.03.2017. The matter was then adjourned to 28.03.2017 for cross-examination of P.W.4. On 28.03.2017, an Advocate-Commissioner was appointed to record the cross-examination of P.W.4. The respondent filed the subject I.A. on 08.03.2017 after cross-examination of P.Ws.2 and 3 was completed.

As the cross-examination of P.W.1 was completed on 09.01.2017 itself, the Family Court observed that it was a mistake on the part of the office to record that the matter was posted on

18.02.2017 for further cross-examination of P.W.1. The Family Court therefore opined that the contention of the husband that cross-examination of P.W.1 was not completed was untenable and as the affidavit filed in support of the I.A. did not even disclose the ground on which such further cross-examination was sought, the Family Court refused to re-call P.W.1 for the said purpose. In consequence, the I.A. was dismissed.

Sri Peddada Narasimha Rao, learned counsel, would place reliance on case law in support of his contention that the Family Court ought to have re-called P.W.1 and enabled his client to cross-examine her further.

In **OM PARKASH V/s. SARUPA**¹, the Punjab and Haryana High Court observed that a party should not be allowed to suffer for any omission or lapse on the part of his counsel when it relates to the requirement of any law. This observation was made in the context of the counsel failing to examine the witness on the point of attestation. This case has no application presently as it related to negligence attributable to the counsel and not to the party concerned.

In **K.K.VELUSAMY V/s. N.PALANISAMY**², the Supreme Court observed that the power to re-call a witness under Order 18 Rule 17 CPC can be exercised by the Court either on its own motion or on an application filed by the parties to the suit and that such power is discretionary but should be used sparingly in appropriate cases to enable the Court to clarify any doubt it may have in regard to the evidence led by the parties. The Supreme Court further observed that the amended provisions of the CPC contemplate and expect a trial Court to hear the arguments immediately after completion of

¹ AIR 1981 PUNJAB & HARYANA 157

² (2011) 11 SUPREME COURT CASES 275

evidence and then proceed to judgment and if there is a time gap between 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 on 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 CPC permit the production of such evidence if it is relevant and necessary in the interest of justice. These general observations as to the legal position, in the considered opinion of this Court, do not advance the contentions urged by Sri Peddada Narasimha Rao, learned counsel, as such principles of law have to be applied on the strength of the individual facts of each case.

The observations of the Bombay High Court in **ANAND V/s. GOVIND**³, relying on **K.K.VELUSAMY**², being on the same lines are therefore of no avail either to the learned counsel.

In **BAGAI CONSTRUCTION V/s. GUPTA BUILDING MATERIAL STORE**⁴, the Supreme Court observed that an application for re-opening and re-calling are interim measures and that it is only for compelling and acceptable reasons, such applications should be considered. There can be no doubting this legal proposition.

In **AYAAUBKHAN NOORKHAN PATHAN V/s. STATE OF MAHARASHTRA**⁵, the Supreme Court observed that the opportunity of cross-examination should be effective so as to meet the requirement of the principles of natural justice and in the absence of such an opportunity being given, it cannot be held that the matter

³ 2013(1)CCC 366 (Bom.)

⁴ (2013) 14 SUPREME COURT CASES 1

⁵ AIR 2013 SUPREME COURT 58

has been decided in accordance with law, as cross-examination is an integral part and parcel of the principles of natural justice.

Significantly, in the affidavit filed in support of the I.A. the husband failed to disclose as to what were the points on which the cross-examination was not effective and the issues on which he wished to elicit further information from P.W.1. However, in the written arguments filed before this Court, reference was made to such aspects. As this material was never placed before the Family Court, this Court is of the opinion that it is not open to the husband to enlarge the scope of this revision by abruptly introducing new material without even filing an application to receive the same. The contents of the written arguments in this regard are therefore eschewed from consideration.

It is a settled principle of law that once a Court records the sequence of events during the course of the judicial proceeding, the same is not open to question. The finding of the Family Court that the cross-examination of P.W.1 was completed on 19.01.2017 and that re-examination was also recorded as NIL on the said date itself must therefore be accepted as final. That apart, it is not in dispute that after completion of the evidence of P.W.1, the cross-examination of P.Ws.2 and 3 was also completed and it was only at the stage of completion of P.W.4's cross-examination that the subject I.A. was filed by the husband claiming that P.W.1's cross-examination was not completed. Had it really been so, the counsel for the husband would not have gone ahead with the cross-examination of P.Ws.2 and 3. It therefore appears that the husband is only trying to take advantage of the mistake made by the office in recording that the matter was adjourned to 18.02.2017 for further cross-examination of

P.W.1. The sequence of events, thereafter, however belies this contention of the husband. This Court therefore finds no grounds to interfere with the well-reasoned and cogent order passed by the Family Court.

The Civil Revision Petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

11th AUGUST, 2017

PGS

