

**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

**CIVIL REVISION PETITION No.6253 of 2016**

**ORDER:**

This Civil Revision Petition, under Article 227 of the Constitution of India, came to be filed by the petitioner against the order dated 17.10.2016 passed in I.A.No.252 of 2016 in O.S.No.24 of 2009 whereby the II Additional District Judge, Madanapalle, Chittoor District, has dismissed the petition filed by the petitioner under Order XVIII Rule 17 r/w. Section 151 of the Code of Civil Procedure, seeking to recall DW.1 for cross examination.

Heard Sri Mahadeva Kanthrigala, learned counsel for the petitioner, and Sri N.Pramod, learned counsel for respondents.

The affidavit filed in support of I.A.No.252 of 2016 would show that the petitioner is the fourth plaintiff in O.S.No.24 of 2009. In said suit, DW.1 filed chief affidavit on 16.11.2014 and his cross-examination was done in part on 30.04.2015. While so, on 18.06.2015 the defendant filed I.A.No.88 of 2015 seeking to appoint an Advocate Commissioner to note down the existing conditions of the building constructions which was dismissed as not pressed on 04.08.2015. Subsequent thereto, again D.W.1 filed I.A.No.140 of 2015 for the very same relief for prolonging the litigation and the same dismissed on 09.02.2016. Thereafter, the matter was posted for cross-examination of D.W.1 and the matter underwent adjournments. Finally, on 15.07.2016 the suit was posted to 09.08.2016, on payment of costs of Rs.200/-. However, it is the case of the petitioner that due to mistake on the part of the clerk of his counsel, date of adjournment was wrongly noted and

as such the cross-examination could not be conducted by the petitioner. Hence, the Court below closed the cross-examination of D.W.1 by the plaintiff. As such, seeking to recall D.W.1 for completion of cross-examination by the plaintiff, the impugned application was filed.

The Court below dismissed the application filed by the petitioner on the ground that since the evidence of D.W.1 was closed, the petitioner has to file an application to re-open the evidence for the purpose of cross-examination of DW.1 and then ask for recalling DW-1. Aggrieved by the same, present revision is filed.

From a reading of the material on record, it is clear that on 09.08.2016 an order came to be passed by the Court below closing the evidence of D.W.1, as counsel for defendant reported no further evidence. Thereafter, an application came to be filed for recalling D.W.1, without making an application for re-opening the defendant's evidence. In the impugned order, the Court below referred to the defect in the petition filed by the petitioner. Further, the Court below has also given liberty to the petitioner to file proper petition to re-open the evidence for the purpose of cross-examination of DW.1 and for recalling of D.W.1. Hence, I see no irregularity in the order passed by the Court below.

At this juncture, it is brought to the notice of this Court that the petitioner filed I.A.No.5 of 2017 before the Court below for re-opening of defendant's evidence and to recall-DW.1 for the purpose of cross examination. In view of the same, the present

Civil Revision Petition is disposed of directing the Court below to dispose of I.A.No.5 of 2007, at the earliest, in accordance with law.

Consequently, miscellaneous petitions pending in this revision, if any, shall stand closed. No costs.

---

**C. PRAVEEN KUMAR, J**

28.02.2016  
sur

