

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

C.R.P. No. 1710 of 2017

ORDER:-

1) This Civil Revision Petition is filed against the Common Order dated 15.12.2016 in I.A.No. 1110 of 2016 in O.S.No. 122 of 2012 passed by the Principal District Judge, Guntur.

2) The petitioners-defendants filed I.A.No. 1109 of 2016 seeking to reopen the suit and I.A.No. 1110 of 2016 to recall PW1 for further cross-examination. The trial Court, after considering the rival contentions, framed an issue, as under:

“As to whether there exist any justifiable grounds to reopen the matter and recall PW1 for further cross-examination.”

3) A perusal of the impugned order reveals that on 20.03.2013, PW1 was examined in chief and on 17.04.2013, he was cross-examined in part, and subsequently, cross-examination was completed on 20.06.2013. Thereafter, PWs.2 to 4 were examined and the matter was posted for the petitioners/ defendants' evidence. After the defendants' witnesses were examined, the evidence was closed. Thereafter, the respondent-plaintiff filed his written arguments. However, the petitioners-defendants filed the present applications seeking the aforementioned reliefs.

4) The learned trial Court, while dismissing the both the applications, recorded the following findings:

“Human memory is fallible. One cannot be expected to remember all things during entire life time with minute details. Also, every *lis* has to reach its logical conclusion within reasonable time. A witness cannot be recalled as and when the other party intends. The reliefs sought for cannot be granted only on the ground that they were asked or that no harm would occur to the other party. The apprehension of the respondent that the recall of PW1 is only to fill up the lacunae cannot be ruled out. The petitioners if really intended to further cross-examine PW1 on genuine grounds, would have moved an application for getting such a relief at least before conclusion of trial. The request now is highly belated.”

5) Moreover, it is stated in the counter affidavit filed by the respondent-plaintiff in the suit that the petitioners/defendants cross-examined PW1 on 17.04.2013 and 20.06.2013 and put several questions in respect of criminal and civil cases. The respondent-plaintiff also examined PWs.2 to 4. The evidence on behalf of the plaintiff was closed on 22.07.2014 and the matter was posted for evidence of the defendant's witnesses on 06.08.2014.

6) It is not in dispute that the suit is an identified matter and is of the year 2012. PW1 was cross-examined in the year 2013 and above applications were filed three years after the cross-examination of PW1. The 4<sup>th</sup> defendant was examined and cross-examined on 12.02.2015 and for further evidence of the petitioners/defendants, they took 19

adjournments and there were several conditional orders on those adjournments, however finally, on 03.11.2015, the evidence of the defendants' witnesses was closed and the matter was posted for arguments on 18.11.2015.

7) It is not in dispute that the written arguments of the plaintiff were filed, and for arguments of the petitioners/defendants, the matter was adjourned to 30.03.2016. Since then, the matter underwent several adjournments i.e. on 06.04.2016, 07.04.2016, 12.04.2016, 18.04.2016 and 25.04.2016 for arguments of the learned counsel for the petitioners/defendants. Out of them on 07.04.2016, when the matter was posted for conditional order, the petitioners/defendants asked for adjournment, accordingly, it was posted to 12.04.2016 for further conditional order for arguments of the defendants. However, on 12.04.2016, again adjournment was sought, as such, the matter was posted to 18.04.2016, on which day, it was ordered that if no arguments on behalf of the petitioners/defendants are advanced, the suit would be posted for judgment on merits.

8) It is pertinent to mention that again on 18.04.2016, adjournment was sought, accordingly, the matter was posted to 25.04.2016 on the same condition.

9) In view of the undisputed facts recorded above, I find no merit in this Civil Revision Petition, and the same is accordingly dismissed. No order as to costs.

10) As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

SURESH KUMAR KAIT, J

21.04.2017

bcj

