

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.2487 & 2547 of 2017

COMMON ORDER:

Heard learned counsel for the revision petitioner/defendant No.3 and also Sri Ch. Venkat Yadav, learned counsel for the respondent No.8/defendant No.2, in both the revisions.

The 2nd defendant/respondent No.8 herein, who alone contested before the lower Court in disposing of the applications in I.A.No.286 & 287 of 2017, one is for reopen of evidence and the other is for recall of DWs.1 to 4 for cross-examination. The other respondents to the revision among the 5 plaintiffs and 8 defendants did not contest before the lower Court. The impugned contest order as referred supra before the lower Court in its dismissal on 13.04.2017 reads that the 3rd defendant did not choose to cross examine DWs.1 to 4 on 22.02.2017 and sought for defer meantime changed the advocate and on 16.03.2017, there is no representation from the 3rd defendant including by changed advocate and having not chosen to cross examine including after impleadment of defendant Nos.5 to 8 which order reached finality in order in C.R.P.No.3533 of 2012 in permitting defendant Nos.5 to 8 for cross examination of DWs.1 to 4 and there even defendant No.3 kept quiet and from the cross examination of DWs.1 to 4 coming since 2006, the Court can not find any reason to permit much less by reopen. The present applications are to reopen and recall of only DWs.1 to 4. It appears the purpose of cross examination is from the inter se dispute between defendant No.3 and DWs.1 to 4, the witnesses for defendant No.1. No doubt as per the settled law in a suit

maintained by plaintiff against defendants in relation to a particular claim the inter se dispute between defendants need not be adverted to. However if there is liability without cross examination of the evidence of DW.1 and his witness DW.4 it may creep in future complications to the right of the defendant No.3. It is the submission of that necessity in permitting to cross examine, to sub serve the ends of justice that is the core aspect not considered by the lower Court, though Order XVIII Rule 17 confers the discretion on the Court to recall any witness and to put any question and putting of questions by party is by permission of Court and party has no independent right once the evidence is closed. It is not even further cross examination to give any questions in a sealed cover of relevant questions but with no cross examination from the perusal on record.

Having regard to the above and in the result, the civil revision petitions are allowed subject to costs of Rs.1,000/- each to DWs.1 and 4 to be paid by the plaintiff to deposit before the Head Clerk of lower Court within one week from the date of receipt of a copy of this order, for the lower Court to summon them and after completion of their evidence to pay them.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 21.07.2017
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