

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.917 OF 2017

ORDER:

The revision petitioners are the defendants/ unsuccessful petitioners in I.A.No.2547 of 2016, dated 10.11.2016 in the pending suit for recovery of money covered by O.S.No.1069 of 2014.

2. The learned Principal District Judge, Ranga Reddy, dismissed the recall of P.W.1 sought for by the defendants for further cross-examination that was filed under Order XVIII Rule 17 r/w section 151 CPC in saying certain aspects to be asked in the cross-examination were not asked by the earlier counsel, from which, there is a change of advocate and those are crucial. The plaintiff as responding to the application disputed the same by counter including from the drawing of the attention of the learned trial judge of the cross-examination was done having taken sufficient time after a gap of one month of the chief-examination that too by taken 2 spells and completed in two spells on 05.01.2016 and 19.01.2016 in detail, whereas the application for recall filed long later to it on 31.08.2016.

3. It is not even the case of the defendants that they issued any notice to the advocate on record for the allegation of without instructions as if got instructions the advocate conducted the trial, that too when advocate was continued all through till filing of the petition by change with new advocate,

thus the said contention has no legs to stand as rightly concluded by the lower court. The only thing to be considered including from the very wording of Order XVIII Rule 17 CPC is the judicial discretion of the court if at all to recall to put any questions which are relevant by the court, subject to the such necessity and it is not the right of the party, much less, to ask for any cross-examination further of any witness. No doubt, the expression of the Apex Court in ***K.K.Velusamy Vs. N.Palaanisamy***¹ speaks, though Order XVIII Rule 17 CPC not specifically covered the inherent power of the court available having its routes from its very constitution under Section 151 CPC can be exercised where it is necessary to sub-serve the ends of justice for recall of any witness for further cross-examination or further examination (cross-examination or re-examination) as the case may be. Here it is to consider whether there are any such grounds in existence and if so, the order of the lower court is unsustainable to interfere.

4. In the affidavit petition, it is averred that there is a communication gap between the earlier advocate and the petitioners/defendants in giving proper instructions in putting several crucial questions to the witness and if an opportunity be afforded those questions be put to the P.W.1 by further cross-examination. No doubt, the questions if disclosed in the affidavit petition, the other side will be alerted

¹ 2011 (11) SCC 275

and proper answers difficult to elicit. However, the proper procedure as held by this Court time and again is to give such questions which are relevant in a sealed cover with the application for the court to consider whether they are any relevant and crucial questions if at all to permit. It is not even done in the case on hand and that too the application filed belatedly though mere belatedly moving the court is not a bar if at all there are factual foundations for the court to exercise jurisdiction.

5. Having regard to the above, the order of the lower court is set aside by restoring the application before the lower court and by directing the petitioner to give in a sealed cover within one week from date of receipt of the order what are the questions to be put for the court if at all on perusal if found relevant only to permit in the cross-examination only such of those questions and not beyond and subject to allowing on heavy costs Rs.5000/- if at all there is any relevancy of such of the questions to permit any of them and to complete the exercise within one month from today.

6. Accordingly and with the above direction, this civil revision petition is disposed of. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

DR.B.SIVA SANKARA RAO, J

28.11.2017
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