

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION NOS.4277 & 4672 of 2017

COMMON ORDER:

In these two Civil Revision Petitions, under Article 227 of Constitution of India, filed by the petitioner/defendant the challenge is to the separate orders, dated 02.08.2017, of the learned X Additional Chief Judge, City Civil Court, Hyderabad, passed in IA Nos. 1382 and 1384 of 2015 filed in OS No. 238 of 2012 insofar as the said orders related to the imposition of costs of Rs.10,000/- each by the trial Court while allowing the said applications filed by the petitioner/defendant for reopening the evidence and recalling PW-1 for cross-examination by the defendant.

2. I have heard the submissions of learned counsel for the petitioner/defendant at the stage of admission. I have perused the material record.

3. Learned counsel for the petitioner first submitted various reasons and chronological events, which lead to the delay in disposal of the suit. She would further submit that though relief is granted in both the applications, the costs imposed are onerous and that if the said costs are to be paid, the defendant has to pay Rs.20,000/- in all to the plaintiff in this suit. She would also bring to the notice of this Court that another suit is pending between the parties and that the two suits are being simultaneously tried and that in that other suit also, while allowing similar applications of the defendant herein, costs were similarly imposed and that, therefore, in all the defendant has to pay Rs.40,000/- towards costs in both the suits and that in

that view of the matter the costs imposed may be reduced to reasonable amounts. She would further submit that in the impugned orders the trial Court, *inter alia*, observed that PW-1 will be permitted to be cross-examined before an Advocate Commissioner and that the Advocate Commissioner would be appointed to record the cross-examination of PW-1; but, neither was an Advocate Commissioner appointed nor was a schedule fixed for cross-examination of PW-1 before the Advocate Commissioner.

4. I have bestowed my attention to the facts and submissions. One of the reasons for delay in the disposal of the suit is misplacement of the Court record due to mixing up of the instant suit record with some other case records and the delay in tracing the same. Eventually, the suit record was traced. The defendant neither cross-examined PW-1 nor adduced any evidence on his side. Subsequently, the defendant filed the instant applications for re-opening the evidence on the side of the plaintiff and recalling PW-1. However, the fact that remains to be taken note is that the suit was posted for hearing arguments as on the date, the defendant's applications were disposed of. Eventually, the petitions were allowed by the impugned orders by imposing costs of Rs.10,000/- in each of the applications of the defendant.

5. In that view of the matter, this Court is of the considered view that there are laches undoubtedly on the part of the defendant and that the defendant is not diligent and was also responsible for the long delay in the disposal of the suit. Though, there is justification for imposition of heavy costs, the imposition of costs of Rs.20,000/- in all is without doubt unjust. Hence, this Court finds that the ends

of justice would be met if the costs are reduced to Rs.5,000/- in each application.

6. On the above analysis, this Court finds that the Civil Revision Petitions can be disposed of with appropriate directions.

7. Resultantly, the Civil Revision Petitions are allowed in part, and the costs imposed @ Rs.10,000/- in the impugned orders and payable by the petitioner/defendant to the respondent/plaintiff in each application are reduced from Rs.10,000/- to Rs.5,000/-. Accordingly, on payment of the said reduced costs, the trial Court shall take steps to appoint an Advocate Commissioner as per norms and procedure for recording the cross-examination of PW-1 and also issue necessary directions to the Commissioner to complete the recording of the cross-examination within two (2) weeks from the date of entrustment of warrant of Commission for the said purpose to the Commissioner. Thereafter, the trial Court shall endeavor to dispose of the suit, as expeditiously as possible, and preferably within one month from the date of the conclusion of the cross-examination of PW-1 before the Advocate Commissioner.

There shall be no order as to costs

Miscellaneous petition, if any, pending in the Civil Revision Petitions shall stand closed.

M. SEETHARAMA MURTI, J

September, 13, 2017

VJL