

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No. 3928 of 2017

Order:

This Civil Revision Petition is filed against the order dated 07.07.2017 in I.A.No.833 of 2017 in I.A.No.190 of 2016 in O.S.No.433 of 2008 pending on the file of the Principal Senior Civil Judge, Ongole.

I.A.No.190 of 2016 was taken up by the trial Court after remand by this Court in CRP No.6261 of 2016, as the said application was filed seeking condonation of delay of 2365 days in filing a petition under Order 9 Rule 13 CPC and when no reasons were assigned by the trial Court for allowing such application. After remand, the petitioner herein, who is the 5th defendant in the suit, filed the affidavits of her husband and the 3rd defendant as PWs.1 and 2. Thereafter, on 03.07.2017, the petitioner filed a memo seeking to eschew the evidence of PW.2 and along with the memo filed an affidavit in lieu of chief-examination of PW.3. On the very same day, the first respondent herein filed I.A.No.833 of 2017 seeking an order denying the permission to the 5th defendant to examine her as PW.2. When the said application was allowed by order dated 07.07.2017, the present Civil Revision Petition is filed.

It appears that after allowing the said application, PW.1 was cross-examined on 10.07.2017 and the evidence on behalf of the defendants was closed on the same day and the respondents evidence was closed on 14.07.2017. The matter was posted for arguments on 18.07.2017 on which date both the parties advanced their arguments and the matter was posted to 21.07.2017 for reply arguments. After filing the present revision petition, the petitioner herein filed a memo before the trial Court on 08.08.2017 and the counsel for the first respondent entered appearance.

In spite of pendency of the revision petition, since no stay order was granted, now the matter is posted to 16.08.2017.

As stated above, the main I.A.No.190 of 2016 is concerned with condonation of delay of 2365 days in filing a petition under Order 9 Rule 13 CPC. The matter is being examined by the trial Court on remand by this Court. The petitioners in the said application seek to examine the 3rd defendant as PW.1 and the 5th defendant as PW.2. In the meanwhile, the husband of the 5th defendant wanted to examine himself on behalf of the 5th defendant, but by virtue of the memo filed on 03.07.2017 that was sought to be eschewed and the 5th defendant herself filed an affidavit on the same day. In those circumstances, in order to give an opportunity to the 5th defendant, the 5th defendant should have been allowed to adduce her oral evidence, but, peculiarly, the present application in I.A.No.833 of 2017 was filed by the respondent on the same day seeking orders not to permit the 5th defendant to be examined as PW.3, since the evidence of PW.2 was eschewed. The trial Court allowed the application and went ahead with the matter. Since the valuable rights of the parties are involved, the trial Court should have given ample opportunity to the parties to adduce their evidence. Keeping in view the probable delay in disposing of the matter, this Court fixed the time limit of six months by order dated 19.04.2017 in CRP No.6261 of 2016 and sufficient time is available to the trial Court. This type of application by the respondent in the facts and circumstances of the case is not known to law.

In the circumstances, this Court is constrained to set aside the impugned order passed by the trial Court in I.A.No.833 of 2017 on 07.07.2017 and the trial Court is directed to allow the 5th defendant to be examined as a witness and liberty should be given to the respondent to

cross-examine her. After completion of her cross-examination, the parties be permitted to advance their arguments and complete the same on or before 15.09.2017. The 5th defendant shall appear before the trial Court for cross-examination on 28.08.2017 and the cross-examination of the 5th defendant shall be completed on the same day. The case shall be completed on or before 15.09.2017 after hearing the arguments.

The Civil Revision Petition is, accordingly, allowed. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions pending in this Civil Revision Petition, if any, shall stand closed.

Since this order is passed in the presence of both the parties, it is open to the petitioner to file a memo before the trial Court seeking adjournment.

Date: 11.08.2017

Note:
Issue CC by 17.08.2017
(B/O)
Nsr

A. RAMALINGESWARA RAO, J

