

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.1329 OF 2014

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dated 10.03.2014 passed in I.A.No.338 of 2013 in O.S.No.41 of 2006 on the file of the Court of the Junior Civil Judge at Kodangal.

2. The contention of the learned counsel for the petitioner is two fold: (1) the trial Court allowed the application without assigning reasons much less cogent and valid reasons; and (2) the present application is filed with an ulterior motive to drag on the proceedings.

3. *Per contra*, the learned counsel for the respondent submitted that some vital suggestions were not put to DW.1 during the course of examination. He further submitted that there is no illegality or irregularity in the order of the trial Court, which warrants interference of this Court.

4. The predominant contention of the learned counsel for the petitioner is that the trial Court allowed the application without taking into consideration the scope of Order XVIII Rule 17 of C.P.C. To substantiate the argument, he has drawn the attention of this Court to the decision in **Vadiraj Naggapa Vernek (d) Through Lrs. Vs. Sharad Chand Prabhakar Gogate**¹, wherein the Hon'ble Apex Court held at paragraph No.16 as follows:

¹ 2009 (3) ALT 25 (SC)

“.....The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.”

5. He has also drawn the attention of this Court to the decision in **A.R.K. Raju Vs. A.V.S. Raju**², wherein this Court held as follows:

“Power under Order 18 Rule 17 CPC be exercised by Court sparingly in appropriate cases and not as a general rule merely on the ground that recall and re-examination of the witness would not cause any prejudice to the parties.”

6. Let me consider the facts of the case in the light of the above legal principles.

7. A perusal of the record reveals that the respondent herein filed O.S.No.41 of 2006 on the file of the Court of the Junior Civil Judge at Kodangal for declaration and recovery of possession. A perusal of the record further reveals that chief examination affidavit of DW.1 was filed on 21.01.2013. DW.1 was cross-examined on 16.04.2013 and on 28.08.2013. When the matter is coming up for arguments, the respondent herein, who is the plaintiff, filed I.A.No.338 of 2013 in O.S.No.41 of 2006 to recall DW.1 for further cross-examination.

8. At the time of arguments, learned counsel for both the parties submitted that the petitioner and the respondent are own brothers. Learned counsel for the respondent submitted that

² 2015 (1) ALT 509

DW.1 was not cross-examined with reference to averments made in paragraph No.2 of the plaint.

9. Learned counsel for the petitioner strenuously submitted that DW.1 was cross-examined at length in respect of the facts pleaded in paragraph No.2 of the plaint.

10. To substantiate the argument, the learned counsel for the petitioner has drawn the attention of this Court to the cross-examination of DW.1 dated 16.04.2013 and 28.08.2013.

11. This Court carefully perused the cross-examination of DW.1 in order to appreciate the contention of the learned counsel for the petitioner. A perusal of the cross-examination of DW.1 clearly reveals that the respondent herein put number of suggestions and questions relating to paragraph No.2 of the plaint averments. From a perusal of the record, it is manifest that the respondent herein cross-examined DW.1 at length on all aspects. In the affidavit, the petitioner has taken a specific plea that due to ill-health, he could not properly instruct his counsel on certain aspects. Merely because his counsel failed to put certain suggestions to DW.1 that itself is not a valid ground to recall DW.1. When the matter is posted for arguments, the present application is filed to recall DW.1. The possibility of filing of this type of applications with an ulterior motive to drag on the proceedings cannot be ruled out. The respondent has taken eight months time to file the application to recall DW.1. No reasons much less cogent and valid reasons are assigned for non-filing of the application within a reasonable period. This Court is very much conscious that mere delay in filing a recall petition by itself is not a valid

ground to dismiss the petition. It is the duty of the petitioner to assign reasons much less cogent and valid reasons explaining the delay for not filing the petition within a reasonable time. The trial Court has to assign reasons much less cogent and valid reasons while disposing of this type of petitions. As rightly pointed out by the learned counsel for the petitioner, the trial Court has not assigned reasons for allowing the application.

12. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that it is not a fit case to recall DW.1 to fill up the lacunae.

13. Accordingly, the Civil Revision Petition is allowed setting aside the order dated 10.03.2014 passed in I.A.No.338 of 2013 in O.S.No.41 of 2006 on the file of the Court of the Junior Civil Judge at Kodangal. There shall be no order as to costs.

14. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 25.01.2017
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