

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION Nos.270 & 245 OF 2017

COMMON ORDER:

1 Civil Revision Petition No.270 of 2017, under Article 227 of the Constitution of India, is filed challenging the order dated 09.12.2016 passed in I.A.No.539 of 2016 in O.S.No.2258 of 2013 on the file of the XX Junior Civil Judge, City Civil Court, Hyderabad, seeking to reopen the matter.

2 The facts leading to filing of the present petition are, briefly, as follows:

3 The respondent filed O.S.No.2258 of 2013 on the file of the Court of the XX Junior Civil Judge, City Civil Court, Hyderabad against the petitioner for recovery of suit schedule property and also for mesne profits. The petitioner filed written statement taking a specific plea that the civil Court has no jurisdiction to entertain the suit and the same is liable to be dismissed. The trial Court returned the plaint to present the same before the proper Court basing on the oral testimony of P.W.1 and Exs.A.1 to A.16. Feeling aggrieved by the judgment and decree dated 23.02.2015 passed in O.S.No.2258 of 2013, the respondent preferred A.S.No.59 of 2015 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad. The appellate Court, after hearing both sides, allowed the appeal with the following observation:

“In the result, the appeal is allowed in part, remitting back the suit for rehearing and to decide on all

issues by giving opportunity to both sides for adducing evidence and hearing.”.

4 After remanding of the matter, the respondent herein filed a memo on 15.11.2016 reporting no further evidence on its behalf. While the things stood thus, the petitioner filed I.A.No.539 of 2016 under Order XVIII Rule 17 r/w Section 151 CPC to reopen the matter for further cross examination of P.W.1. The respondent filed counter opposing the same. The trial Court by order dated 09.12.2016 dismissed the said petition. Hence the present Civil Revision Petition.

5 The learned counsel for the petitioner/defendant submitted that 1) the trial Court failed to appreciate that no prejudice will be caused to the respondent even if the petition is allowed, 2) the trial Court without considering the scope of Order XVIII Rule 17 CPC dismissed the petition on erroneous grounds, 3) the trial Court failed to consider that the respondent introduced a new version in the appeal and hence it is just and necessary to reopen the suit for further cross examination of P.W.1; and 4) the order passed by the Court below is not sustainable either on facts or in law.

6 *Per contra*, the learned counsel for the respondent submitted that after remanding of the matter, the respondent has not adduced any new evidence, in such circumstances, the petition filed by the petitioner under Order XVIII Rule 17 is not maintainable. She further submitted that the petitioner filed the present petition with an ulterior motive to fill up the lacunae on

his part which is not permissible under law. It is her further contention that there is no illegality or irregularity in the order passed by the trial Court and hence the present Civil Revision Petition is liable to be dismissed.

7 In order to appreciate the rival contentions this Court is placing reliance on the following decisions:

Vadiraj Naggapa Vernek (d) Through Lrs. Vs. Sharad Chand Prabhakar Gogate¹, wherein the Hon'ble Apex Court held at paragraph No.16 as follows:

“.....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.”

The very same principle is followed by this Court in **A.R.K. Raju Vs. A.V.S. Raju²**.

8 Let me consider the facts of the case on hand in the light of the above legal principle.

9 The respondent filed the suit against the petitioner for recovery of possession of the suit schedule property. A perusal of the record prima facie reveals that tenant and landlord relationship between the petitioner and the respondent. It is not in dispute that the rent of the suit schedule property is less than

¹ 2009 (3) ALT 25 (SC)

² 2015 (1) ALT 509

Rs.3,500/-. If the rent is less than Rs.3,500/- the provisions of Rent Control Act will apply to the property in question. Whether the respondent society obtained an exemption under Section 26 of the A.P. Buildings (Lease, Rent and Eviction) Act 1960 or not is a point to be considered at the time of final hearing of the suit and such a vital aspect cannot be decided while deciding interlocutory applications. After remanding of the matter, the suit was posted to 07.11.2016 for appearance of the parties and thereafter, the matter was posted to 15.11.2016 for respondent's side further evidence, if any. On that day, the counsel for the respondent filed memo reporting no further evidence on plaintiff's side. Thereafter, the matter was posted to 22.11.2016 for petitioner's side evidence. The petitioner has taken a few adjournments for adducing evidence on his side and thereafter filed the I.A.No.539 of 2016.

10 It is not in dispute that the respondent has not examined anybody after remanding the matter from the appellate Court. The respondent has not amended the plaint introducing any new version at least to enable the petitioner to file the above I.A. to recall P.W.1 for clarification if any. The testimony of P.W.1 remained intact even after remanding of the matter.

11 The learned counsel for the Petitioner submitted that the respondent has introduced a new version in the appeal, therefore, in order to clarify that aspect, it is just and necessary to recall P.W.1 for further cross examination. I have carefully

scanned the judgment in A.S.No.59 of 2015. The appellate Court found fault with the trial Court for returning of the plaint to be presented before the proper Court without answering the other issues framed by it. The appellate court remanded the matter directing the trial Court to give an opportunity to both parties to adduce evidence and answer all the issues. No new version was introduced at the appellate stage by the respondent as contended by the petitioner. If really the petitioner is aggrieved by the judgment and decree in A.S.No.59 of 2015, what prevented him to challenge the same? Therefore, the judgment and decree passed in A.S.No.59 of 2015 became final and binding on the petitioner. The petitioner cannot question the legality of the judgment in A.S.No.59 of 2015 in this revision. The possibility of filing of this type of applications in order to protract the matter cannot be ruled out completely. It is the duty of the petitioner to establish the valid grounds to recall P.W.1 for further cross examination. The affidavit is conspicuously silent with regard to the prejudice likely to be caused to the petitioner if he is not permitted to further cross examine P.W.1. It is needless to say that merely because no prejudice will be caused to the respondent by itself is not a valid ground to allow the applications filed under Order XVIII Rule 17 CPC in a routine manner without being satisfying the ingredients thereof. Some times, the parties to the proceedings will file this type of petitions to protract the matter. The trial Court considered the facts of the case on hand in the light of Order XVIII Rule 17 CPC

and dismissed the petition by assigning cogent and valid reasons. This Court shall not lightly interfere with the discretionary orders passed by the trial Court while exercising jurisdiction under Article 227 of the Constitution of India. There is no illegality or irregularity in the order passed by the trial Court which warrants interference of this Court. Hence the Civil Revision Petition lacks merits and bonafides and hence the same is liable to be dismissed.

12 CRP No.245 of 2017 is filed challenging the order dated 09.12.2016 passed in I.A.No.540 of 2016 in O.S.No.2258 of 2013 on the file of the XX Junior Civil Judge, City Civil Court, Hyderabad, which was filed to recall P.W.1 in the suit.

13 Today this Court dismissed Civil Revision Petition No.270 of 2017 with certain findings. In view of the findings recorded in Civil Revision No.270 of 2017, no further orders need be passed in this Civil Revision Petition.

14 Hence the CRP No.270 of 2017 and CRP No.245 of 2017 are dismissed. No order as to costs. As a sequel miscellaneous petitions, if any, pending in these Civil Revision Petitions, shall stand closed.

T. SUNIL CHOWDARY, J

Date: 17th February, 2017
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