

THE HON'BLE SRI JUSTICE SANJAY KUMAR
CIVIL REVISION PETITION NO.5746 OF 2017

O R D E R

This civil revision petition under Article 227 of the Constitution arises out of the order dated 31.08.2017 passed by the learned Judge, Family Court, Ranga Reddy District at L.B.Nagar, in I.A.No.447 of 2017 in FCOP No.1338 of 2015. The said I.A. was filed by the petitioner-wife under Order 18 Rule 17 CPC to recall the respondent-husband herein, the petitioner in the FCOP, who had deposed as P.W.1, for further cross-examination. By the order under revision, the Court below dismissed the I.A. being of the opinion that no reasons were made out to recall P.W.1.

Heard Sri Koka Srinivasa Kumar, learned counsel for the petitioner-wife, and Sri P.R.Balarami Reddy, learned counsel for the respondent-husband.

Perusal of the record reflects that the respondent-husband filed an affidavit in lieu of chief-examination running into five pages. His cross-examination on 30.03.2017 resulted in barely filling one and a half pages. It appears that the petitioner-wife thereafter changed her counsel and realized that various allegations in the deposition of P.W.1 were left untouched.

No doubt, in the petition filed in support of the subject I.A., the petitioner-wife stated that her counsel inadvertently closed the cross-examination after partly cross-examining P.W.1. This aspect of the matter was considered by the Court below and a finding was recorded in the order under revision that P.W.1's cross-examination was closed after recording the re-examination as nil and it could not therefore be said to be cross-examination in part.

Though this Court would ordinarily be disinclined to allow recall of witnesses under Order 18 Rule 17 CPC merely because there is a change of counsel, two aspects need to be borne in mind in so far as the present case is concerned. The first is that the cross-examination was demonstrably brief given the length thereof, as already referred to *supra*. That apart, the cross-examination of P.W.1 ended on 30.03.2017 and the subject I.A. was filed on 12.06.2017. On the intervening date of hearing on 02.05.2017, the matter was adjourned. Therefore, there was no delay/laches on the part of the petitioner-wife in seeking recall of P.W.1. As valuable rights of the petitioner-wife would turn upon effective cross-examination of her husband, speaking as P.W.1, the Court below ought to have been more liberal in permitting the same on the strength of the obtaining facts. However, as the petitioner-wife is herself responsible for closure of the evidence of P.W.1 in the first instance, albeit due to her earlier counsel, the respondent-husband is entitled to costs.

The civil revision petition is accordingly allowed setting aside the order under revision and allowing I.A.No.447 of 2017 in FCOP No.1338 of 2015. The Court below shall recall P.W.1 and permit his further cross-examination upon payment of costs of Rs.1,000/- (Rupees one thousand only) by the petitioner-wife to the respondent-husband. The petitioner-wife shall however avail this opportunity of cross-examination as fixed by the Court below without fail and without seeking adjournments.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

22nd DECEMBER, 2017
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