

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION Nos.5895 and 5898 of 2017

COMMON ORDER:

1) C.R.P.No.5895 of 2017 is filed, against the order dated 05.07.2017, passed in I.A.No.872 of 2017 in O.S.No.74 of 2016 on the file of the Principal Senior Civil Judge, Kakinda, wherein an application filed under Order XVIII Rule 17 of Cr.P.C. to recall PW.1 was dismissed.

2) C.R.P.No.5898 of 2017 is filed, against the order dated 05.07.2017, passed in I.A.NO.873 of 2017 in O.S.No.74 of 2016 on the file of the Principal Senior Civil Judge, Kakinda, wherein an application filed under Section 51 of C.P.C. to re-open the suit was dismissed.

3) Since the issue involved in both the Civil Revision Petitions filed under Article 227 of the Constitution of India are interconnected, they are disposed of by this common order.

4) The facts in issue are as under:

The first respondent herein, who is the plaintiff, filed the above suit for recovery of money. The averments in the affidavit filed in support of the petition would show that on 27.04.2017, the trial Court recorded that the cross-examination of PW.1 is 'nil' closed the plaintiff's evidence and posted the matter for defendants' evidence. It is stated that the defendants have got a

good case to contest the matter on merits. As such, they filed I.A.Nos.872 and 873 of 2017 seeking recall of PW.1 and also to re-open the suit.

5) By an order, dated 05.07.2017, the trial Court dismissed the above two applications on the ground that no counter is filed. Though PW.1 was present to enable the petitioners to cross-examine him, but neither petitioners nor their counsel were present. Challenging the same, the present Civil Revision Petitions came to be filed.

6) Learned counsel for the petitioners mainly submits that it is practice of the Court that if an application is filed to recall PW.1, a date would be fixed for cross-examination of PW.1. But without fixing any date, the trial Court dismissed the application on the ground that though PW.1 was present, the petitioners and their counsel were not present to cross-examine PW.1 on that day. He further submits that since the suit is of the year 2016 and the same is at the stage of evidence of the defendants, an opportunity may be given to the petitioners to contest the matter. The same is opposed by the learned counsel for the first respondent.

7) As seen from the order, the application filed by the petitioners came to be dismissed on the ground that no counter is filed. Since the case is still at the stage of defendants' evidence and as no prejudice would be caused to the plaintiff if the petitioners are given an opportunity to cross-examine PW.1, it would be a fit case to give an opportunity to cross-examine PW.1.

8) Accordingly, both the Civil Revision Petitions are allowed permitting the petitioners to cross-examine PW.1, on the next date of adjournment. It is made clear that the trial Court shall not entertain any application filed by the petitioners seeking further adjournment for cross-examination of PW.1.

9) There shall be no order as to costs. Miscellaneous Petitions, if any, pending in these Civil Revision Petitions, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

08.12.2017
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