

THE HON'BLE SRI JUSTICE N.BALAYOGI

CIVIL REVISION PETITION No.6123 of 2017

ORDER:

This revision under Article 227 of Constitution of India is filed assailing the order dated 21.8.2017 passed by the Senior Civil Judge at Bobbili dismissing I.A.No.571 of 2017 for default in O.S.No.211 of 2012 on the ground that though costs memo was filed, condition imposed by the Court on 16.8.2017 was not complied with.

The contention of the revision petitioners is that they filed chief-affidavit of the proposed witness along with an application to reopen the case by paying costs of Rs.100/- as directed by the trial Court and therefore, there was substantial compliance of the conditions imposed by the trial Court in its order dated 16.8.2017. It is further submitted that except the evidence of defendant No.5, there are no other witnesses to be examined on behalf of the petitioners herein and therefore, there was no necessity to file the list of witnesses.

Heard the learned counsel for the petitioners and perused the material available on record.

As seen from the record, in the affidavit filed in support of I.A.No.571 of 2017, the petitioners stated that the suit in O.S.No.211 of 2012 was posted to 29.6.2017 for their evidence. On the said date, the petitioners could not attend the Court, due to the communication gap with the counsel in respect of date of adjournment and due to ill-health.

Subsequently, on coming to know that their evidence in the suit is closed, he sent his son to file an application to recall P.W.1 for further cross-examination and that after recovery, he approached his counsel and filed the impugned I.A. seeking reopen of their evidence. The said I.A. was allowed as per the order of the trial Court on 16.8.2017 on costs of Rs.100/- with condition to file the list of witnesses and also chief-affidavit of witnesses. In compliance with the order dated 16.8.2017, the petitioners herein filed memo to the effect of payment of costs and as per the averments, they also filed the chief-affidavit of defendant No.5 specifying that no other witnesses will be examined.

Since the conditional order of the trial Court dated 16.8.2017 is substantially complied with by the petitioners and that they also specifically stated that no other witnesses are to be examined, the impugned order of the trial Court would cause prejudice to the petitioners. By allowing the petitioners herein to adduce evidence, no prejudice would be caused to the respondents herein particularly in the interest of justice, to avoid delay and to save time, since the suit is of 2012 and as per the Apex Court directions, the old matters have to be disposed of as early as possible and it being only permitting the petitioners herein to adduce their evidence, that too only one witness, I find that there is no necessity to issue notices to the respondents in this revision.

Under the above circumstances and for the reasons stated, the Civil Revision Petition is allowed and the impugned order is set aside and I.A.No.571 of 2017 in O.S.No.211 of 2012 stands allowed. No order as to costs.

Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

10th November, 2017

Tsr

