

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.6836 and 6841 of 2017

COMMON ORDER :

These revisions are filed by the petitioner/ defendant, aggrieved by the separate orders dated 13.10.2017 in I.A.No.782 of 2017 and I.A.No.781 of 2017 in O.S.No.519 of 2014 passed by the XI Additional Chief Judge, City Civil Court, Hyderabad.

2. Heard the learned counsel for the petitioner/ defendant and taken as heard the respondent/ plaintiff for having been served failed to attend and perused the grounds urged in the revisions and the impugned order of the lower Court.

3. The respondent herein is the plaintiff in O.S.No.519 of 2014, which is filed for recovery of a sum of Rs.17,50,000/- with subsequent interest @24%p.a. from the date of suit till realization and for costs. The applications in I.A.Nos.782 and 781 of 2017 are filed by the defendant to recall PWs.1 to 3 for cross examination and to reopen the suit respectively.

4. The very counter in opposing the petitions stated that as PW.2 died, the Court cannot pass an order for recall of a dead person.

5. So far as recall of PW.3 is concerned, he is only a witness to the transaction, it is hardly believable of a witness to the limited scope of evidence was not cross examined on material aspects and still to be recalled thereby, there are no grounds to permit recall of PW3.

6. So far as recall of PW.1 is concerned, he is the plaintiff. Even the counter filed before the Court says, earlier the defendant was taking time for cross examination to settle the matter for the efforts are in progress. It is there from and the cross examination subsequently undertaken what the lower Court in dismissing the application observed is that it is nothing but to drag on the matter. In fact, PWs.1 to 3 were cross examined before the advocate commissioner respectively on 16.12.2015, 13.04.2016 and 15.12.2016 and the petition for recall of them for that nearly six months later on 02.06.2017. However, the fact remains that the evidence of defendant not so far completed, leave about whether commenced or not is not even clear from the impugned order of the lower Court. The lower Court from this factual matrix by covering the above observed that defendant in the petition wants to put some essential, relevant and crucial material questions to be put to the witness and did not state on which aspects

he wants to put questions and how those are essential and crucial. Thus, there is no reason for recall.

7. This Court, in *Badana Mutyalamma and another v. Palli Appala Raju*¹ referring to Order 18 Rule 17 and Section 151 C.P.C. and the expressions of the Apex Court in *Ram Rati v. Mange Ram (D) thr. Lrs. and others*² and *K.K.Velusamy v. N.Palanisamy*³ observed that it is not the right of the party, but the power of the Court within the judicial discretion to exercise for recall of any witness if at all to put any relevant questions where necessary to put by the Court, it is observed there from that to put questions by the Court includes to permit any party to put those questions instead by the Court in its discretion. Now, there from, it is only the purpose of recall arises, if there are any relevant questions to be put for further cross examination to exercise the discretion judiciously by the Court as said power is also equally available to the Court under Section 165 of the Indian Evidence Act.

8. Having regard to the above, so far as the observation of the trial Court, though, to some extent relevant of what are the necessary questions to be put not even mentioned to consider, if such questions are given in the affidavit, the

¹ 2016(6) ALD 510

² 2016(3) ALD 162 (SC)

³ 2011(11) SCC 275

other party to be alert and if not given, there is no end for the cross examination under the guise of recall for limited questions, thereby, in *Badana Mutyalamma (supra)*, this Court observed that the proper recourse for the law not settled so far is to ask the party, who seeks for recall to give in a sealed cover what are the relevant questions or area of the further examination and permit by question appears in the order to be passed if at all among those questions, which are relevant and admissible, within the power of the Court under Section 136 of the Indian Evidence Act.

9. Having regard to the above, the order of the lower Court dismissing the application in toto is by setting aside only to the extent of recall of PW.1, subject to the defendant submitting in a sealed cover what are the relevant questions to put to the witness before the trial Court within one week from the date of receipt of copy of this order and there from, the trial Court shall consider only among those questions, which are relevant and permit by securing the witness. It is no doubt, subject to costs of Rs.3,000/- (Rupees Three thousand only) payable by the revision petitioner/ defendant before the trial Court to the plaintiff or his counsel, as the case may be.

10. Accordingly, C.R.P.No.6836 of 2017 is partly allowed and C.R.P.No.6841 of 2017 is closed, as no application for reopen is required unless the matter is reserved for judgment.

11. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. There shall be no order as to costs.

Dr. B. SIVA SANKARA RAO, J

Date:14-12-2017

Note:
Issue C.C. tomorrow.
B/o.
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