

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.7275 and 7276 of 2017

COMMON ORDER:

Heard both sides in both the revisions. Perused the grounds urged in the revisions and the impugned orders.

2. Undisputedly, the revision respondent as respondent R.C.No.311 of 2010 after closure of the evidence of R.C. petitioner having been examined prior to 2013 or during the year 2013 filed the applications in I.A.Nos.179 and 180 of 2013 for recall of him (RW.1) to exhibit some more documents by receiving the same and the same were dismissed by orders of the Rent Controller, dated 17.08.2013 and C.R.P.Nos.4140 of 2013 and 4395 of 2016 respectively preferred and those were ended in dismissal on 01.02.2017. Now again fresh petitions covered by I.A.No.154 and 155 of 2017 for recall of RW.1 and to receive those along with other documents sought for. The lower Court allowed the applications to receive some of the documents by respective orders, dated 07.12.2017, which is the subject matter of impugment by the R.C. petitioner as revision petitioner herein.

3. As held by this Court in the earlier round of revisions dismissing C.R.P.Nos.4140 of 2013 and 4395 of 2016 supra, by common order, dated 01.02.2017, referring to the expression of the Apex Court in **Vadiraj Naggappa Vernekar (deceased by L.Rs.) v.**

Sharad Chand Prabhakar Gogate¹, particularly referring to para 16, the provision Order XVIII Rule 17 C.P.C. is not meant to fill up the lacunas for the lack of earlier diligence, if any, to invoke to the prejudice of the other party, but for only where the Court after evidence of both sides felt any necessity of pronouncements an effective verdict recall of any witness to put any questions by the Court and not otherwise, is not in dispute, but for to say, as referred in another expression of this Court in **Badana Mutyalamma and another v. Palli Appala Raju²**, by subsequent expression of **K.K.Velusamy v. N.Palanisamy³** and **Rama Rati v. Mange Ram (D) thr. L.Rs. and others⁴**, that as per Order XVIII Rule 17 C.P.C., it is not the right of the party but the power of the Court to sub-serve the ends of justice if at all to invoke irrespective of Court can allow even application moved by the party where it feels to sub serve the ends of justice and any recall of any witness is necessary and not otherwise. It is clearly held in the expressions of the Apex Court reiterated in B.Mutyalamma supra that this provision is introduced with the basic purpose postulated to enable the Court to clarify any position or doubt and the Court may either suo motu or on the request of the party, recall any witness at any stage and this can be exercised that any stage of the suit and once Court recalls the witness for purpose of any such clarification or otherwise, the Court may permit the parties to assist the Court by examining the witness for said

¹ AIR 2009 SC 1604

² 2017 (5) ALT 69

³ (2011) 11 SCC 275

⁴ 2016 (3) ALD 162 (SC)

purpose. However, it is not to fill up the lacunas or gaps, much less to the prejudice of the other side. Once such is the position, it is the power of the Court to sub serve the ends of justice, the judgments in O.S.No.593 of 2005 and in C.C.Nos.706 of 2009 and 709 of 2002 are not the new documents, but for substantiating to the affidavit contention of those documents even available, the earlier advocate not properly conducted though this Court cannot encourage as also held by the Apex Court in **T.N.Electricity Board and another v. N.Raju Reddiar and another**⁵ of encouraging filing of petitions by change of advocates by throwing blame on the earlier advocates, each case to be decided on own facts and once these material documents, which are necessary for effective disposal of the lis not filed even available from perusal of certified copies and when it clearly depicts some latches of the earlier advocate from which the party may not suffer that too those are necessary, the Court should have been received those three documents and not otherwise instead of allowing for other documents also.

4. Having regard to the above, the revisions are confined to receiving of the documents covered by judgments and the pleadings of plaint and written statement in O.S.No.593 of 2005 and the judgments in C.C.Nos.709 of 2002 and 706 of 2009 and not otherwise and by permitting recall of RW.1 and marking of those documents, within one week from the date of receipt of the order, by giving opportunity for cross-examination to the R.C. petitioner herein, subject to costs of

⁵ AIR 1997 SC 1005

Rs.3,000/- payable by RW.1 to the petitioner. If the costs not paid within one week from the date of receipt of the order, the order of the lower Court holds good for all purpose without any further witness and the revisions being allowed by setting aside the entire order of the lower Court for all purpose.

5. Accordingly and in the result, both the revision petitions are allowed.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

21st December 2017.

Note:

Issue C.C. by 22.12.2017.

(b/o)
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Dr. B. SIVA SANKARA RAO, J

