

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NOS.2518 & 2519 OF 2011

COMMON ORDER:

These petitions are filed under Article 227 of the Constitution of India, challenging order in I.A.Nos.176 & 177 of 2011 in O.S.No.1495 of 2006 passed by the I Additional Senior Civil Judge, Visakhapatnam.

I.A.Nos.176 of 2011 in O.S.No.1495 of 2006 is filed to set-aside the order dated 22.03.2011 in I.A.No.783 of 2010 to reopen the suit for the purpose of adducing further evidence on the petitioner/defendant side. The Court below dismissed the application on the ground that the cross-examination is completed in I.A.No.783 of 2010.

I.A.No.177 of 2011 in O.S.No.1495 of 2006 is filed to recall P.W.2 for the purpose of cross-examination. The Court below dismissed the said application also on the ground that cross-examination is completed and the interlocutory application is filed only to drag on the matter.

Aggrieved by the orders passed in I.A.Nos.176 & 177 of 2011 in O.S.No.1495 of 2006, the present civil revision petitions are filed.

I.A.No.784 of 2010 in O.S.No.1495 of 2006 was allowed on 21.02.2011 on the condition that the petitioner has to pay costs of Rs.100/- to the BAR association and on condition that the petitioner has to get cross-examine P.W.2 on the next date of adjournment, failing which the petition shall stand dismissed, posted to 14.03.2011. On that day the costs were paid, memo was

filed. P.W.2 was also present. As the Presiding Officer was on medical leave, the suit was posted to 22.03.2011. on 22.03.2011, the suit was entrusted to the junior counsel attached to the office of Sri Saibaba and Srinivas, Advocates, Visakhapatnam to represent the suit during call work and if the suit is kept pending for cross-examination, requested to inform them. But, they did not inform, thereby closed the cross-examination of witness P.W.2.

Though the reason appears to be artificial, not beyond reasonable control of the counsel, but still, to avoid unnecessary delay in disposing the matter, since the petitioners were successful in dragging the matter for eight years after passing the orders, it is appropriate to allow these civil revision petitions, on costs.

In **Vadiraj Naggappa Vernekar (dead) through LRs v. Sharadchandra Prabhakar Gogate**¹, the Supreme Court though considered the scope of Order XVIII Rule 17 i.e. to recall of witness after examination is completed, the scheme and object and held that it is obvious that only after cross- examination of the witness that certain lapses in his evidence came to be noticed which impelled the appellant to file the application under Order 18 Rule 17 CPC. Such a course of action which arises out of the fact situation in this case, does not make out a case for recall of a witness after his examination has been completed. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC. The Supreme Court further

¹ (2009) 4 Supreme Court Cases 410

held that it is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination. Of course, if the evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, it is always within the discretion of the Trial Court to permit recall of such a witness for re-examination with permission to the defendants to cross-examine the witness thereafter. The need for the court to act in a manner to achieve the ends of justice (subject to the need to comply with the law) does not end when arguments are heard and judgment is reserved. If there is abuse of the process of the court, or if interests of justice require the court to do something or take note of something, the discretion to do those things does not disappear merely because the arguments are heard, either fully or partly. The convention that no application should be entertained once the trial or hearing is concluded and the case is reserved for judgment is a sound rule, but not a straitjacket formula. There can always be exceptions in exceptional or extra-ordinary circumstances, to meet the ends of justice and to prevent abuse of process of court, subject to the limitation recognized with reference to exercise of power under section 151 of the Code. Be that as it may. In this case, the applications were made before the conclusion of the arguments. This inherent power of the court is not affected by the express power conferred upon the court under Order 18 Rule 17 of

the Code to recall any witness to enable the Court to put such question to elicit any clarifications. The power to recall any witness under Order 18 Rule 17 can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any issue or doubt it may have in regard to the evidence led by the parties by recalling any witness so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions. However, this power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. Order 18 Rule 17 is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded.

According to the principle laid down in the above judgment, at any stage of the proceedings, the witness can be recalled by exercising power under Order XVIII Rule 17 C.P.C by reopening the evidence.

Hence, the civil revision petitions are allowed, on payment of costs of Rs.2,500/- each, by the petitioner to the respondents in the respective civil revision petitions, permitting the petitioner to cross-examine P.W.2 and the Court below is directed to fix the date for cross-examination of P.W.2. In the event of failure to pay the costs to the respondent or even failure to cross-examine P.W.2,

within the time stipulated the Court shall pronounce judgment based on the material available on record. Further, the Court below is directed to dispose of O.S.No.1495 of 2006 as expeditiously as possible, in any event, not later than one month from the date of receipt of copy of this order.

In the result, both the civil revision petitions are allowed.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:27.02.2018

SP

