

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

CIVIL REVISION PETITION NO.820 OF 2018

DATED:16-02-2018

Between:

Sunkara Janaki Lakshmi
and others

... Petitioners

And

A.P. State Financial Corporation
Rep. by its Branch Manager
D.No.52-14-77/1, Near Bullayya College
Resapuvanipalem, Visakhapatnam
and others

... Respondents

COUNSEL FOR THE PETITIONERS: Mr. G. Rama Gopal

COUNSEL FOR THE RESPONDENTS: -

THE COURT MADE THE FOLLOWING:

ORDER:

This civil revision petition arises out of order dt.09.1.2018 in I.A. No.24 of 2017 in O.S. No.22 of 2010 on the file of the VI Additional District Judge, Visakhapatnam.

2. The petitioners filed the aforementioned suit against the respondents - defendants for declaration of title and permanent injunction. The trial in the suit began on 1.9.2016. After closing of the plaintiffs' side evidence, the evidence on the defendants' side was commenced. Though D.W.1 was present on 22.09.2017, the petitioners' counsel failed to cross-examine him and therefore the cross-examination by the petitioners was recorded as "Nil". After D.W.2 was examined, by order dt.17.10.2017 D.W.1 was recalled on 26.10.2017 (mistakenly mentioned in the impugned order as 26.12.2017) and was partly cross-examined. The case was adjourned to 27.10.2017 for further cross-examination. Though D.W.1 was present on that day, the petitioners' counsel did not come forward to cross-examine him. On 24.11.2017, D.W.1 was recalled and cross-examined in part. When the petitioners' counsel sought time for further cross-examination of D.W.1, the witness represented that he has already attended the Court for 5 or 6 times traveling from Kakinada. In spite of the said

representation, the Court has adjourned the case to 08.12.2017 for further cross-examination. When the witness was present on the said date, a representation was made that the petitioners' counsel was admitted in hospital for a surgery. Therefore, the suit was adjourned to 29.12.2017. On the said date, though D.W.1 was present, he was not cross-examined and instead it was represented that the petitioners' counsel has gone to the hospital for review of his case. The Court below, however, closed the evidence of D.W.1.

3. The facts narrated above would show that several opportunities were given to the counsel for the petitioners for cross-examining D.W.1. The Court was considerate in recalling D.W.1 on 24.11.2017. D.W.1 was cross-examined on two occasions, but for the reasons best known to the counsel for the petitioners, he did not complete his cross-examination. When a representation was made that the counsel has undergone surgery, the Court has shown further indulgence by adjourning the case by three weeks. The discharge summary revealed that the counsel was admitted in hospital on 07.12.2017, the surgery was performed on 08.12.2017 and he was discharged on 09.12.2017 itself. Though the Court below appeared to have imported its personal knowledge about the

nature of the surgery, this Court feels it unnecessary to delve into the said aspect. It will suffice to note that the petitioners failed to produce any evidence to show that their counsel could not attend the Court in order to attend the hospital for review. Even the Medical Certificate dt.09.12.2017 does not show that he was required to consult the Doctor on 29.12.2017. In the above facts and circumstances of the case, I am of the opinion that the Court below was fair in affording several opportunities to the counsel for the petitioners to cross-examine D.W.1 and in spite of the same, he failed to avail those opportunities.

4. Hence, I do not find any reason to interfere with the well-considered order of the Court below. The civil revision petition is accordingly dismissed.

As a sequel to dismissal of the civil revision petition, I.A. No.1 of 2018 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

16-02-2018

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