

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.733 and 769 of 2018

COMMON ORDER:

These two Civil Revision Petitions are filed under Article 227 of the Constitution of India challenging the Orders dt.10.01.2018 in I.A.No.68 and 67 of 2018 in FCOP No.76 of 2014 passed by the Judge, Family Court-cum-VI Additional District and Sessions Judge at Khammam, whereby the petitions filed for reopening the evidence in the suit and recall the witness were dismissed on the ground that the counsel for the petitioner did not cross examine Rw.2 though permitted.

F.C.O.P.No.76 of 2014 is filed for various reliefs. When the petition was posted for hearing after completion of Rw.2 evidence since the counsel for the petitioner did not cross examine Rw.2, a petition under Order 18 Rule 17 CPC along with the application to reopen the evidence under Section 151 Cr.P.C were filed by the petitioner on the ground that Rw.2 is required to be further examined as the counsel was absent on that day i.e., 10.01.2018 and thereby the trial Court closed the evidence of the respondent and posted the petition for arguments.

More conveniently, the counsel filed applications under Order 18 Rule 17 and Section 151 CPC to reopen the case by recalling the witness, but left the station conveniently on one pretext or the other. However, the Court allowed the applications and permitted the counsel for the petitioner to cross examine RW.2, but to the surprise of the Court, the counsel was absent and avoided cross examination on the pretext that he went to Kothagudem. This is the practice being adopted by some of the counsel to avoid disposal of the matters pending before the Courts. When the counsel is expected to go out, he has to make

necessary alternative arrangements and leaving the station by the counsel directing the party to obtain adjournment is nothing but disowning his responsibility leaving case to the fate of the parties. In *Shiv Cotex v Tirgun Auto Plast Private Limited and others*¹, the Apex Court in para No.16 made serious objections against such practice and held as follows:

“No litigant has a right to abuse the procedure provided in the CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system. It is true that cap on adjournments to a party during the hearing of the suit provided in proviso to Order XVII Rule 1 CPC is not mandatory and in a suitable case, on justifiable cause, the court may grant more than three adjournments to a party for its evidence but ordinarily the cap provided in the proviso to Order XVII Rule 1 CPC should be maintained. When we say ‘justifiable cause’ what we mean to say is, a cause which is not only ‘sufficient cause’ as contemplated in sub-rule (1) of Order XVII CPC but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling necessity like sudden illness of the litigant or the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake, etc. in the area where any of these persons reside; an accident involving the litigant or the witness or the lawyer on way to the court and such like cause. The list is only illustrative and not exhaustive. However, the absence of the lawyer or his non-availability because of professional work in other court or elsewhere or on the ground of strike call or the change of a lawyer or the continuous illness of the lawyer (the party whom he represents must then make alternative arrangement well in advance) or similar grounds will not justify more than three adjournments to a party during the hearing of the suit. The past conduct of a party in the conduct of the proceedings is an important circumstance which the courts must keep in view whenever a request for adjournment is made. A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit - whether plaintiff or defendant - must cooperate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don't, they do so at their own peril”.

In view of the law declared by the Apex Court, it is the duty of the counsel to make necessary alternative arrangements and the Court can grant adjournments in few circumstances illustrated in para No.16 of the above judgment, but none of these grounds are available to the petitioner in the present case and the counsel for one reason or the other avoided to cross examine the witness, but for the fault of the counsel, the parties shall not be put to any inconvenience and therefore, taking into consideration of the facts and circumstances, I

deem it appropriate to impose costs on the petitioner with a specific direction to the trial Court to complete the trial and dispose of the case as per law.

In the result, these two Petitions are allowed setting aside the Orders dt. 10.01.2018 passed in I.A.No.67 and 68 of 2018 on payment of costs of Rs.1000/- in each petition, payable to the respondent before the trial Court within a period of one week from today and on such deposit, Rw.2 is directed to appear before the Court on 20.04.2018 and on such appearance, the counsel shall cross examine the witness on the same day and in the event of failure to cross examine on the day fixed, the petitioner is not entitled to cross examine the witness on any other subsequent day, subject to appearance of Rw.2 on the day fixed by the Court, in such a case, the Order shall automatically stand cancelled.

Accordingly, these two Civil Revision Petitions are allowed setting aside the Orders dt. 10.01.2018 in I.A.No.67 and 68 of 2018 in FCOP No.76 of 2014 on the file of Judge, Family Court-cum-VI Additional District Judge at Khammam.

As a sequel, miscellaneous applications pending, if any, in these cases, shall stand closed.

M. SATYANARAYANA MURTHY, J

Dt: 09-04-2018

Note: Issue C.C. by 11.04.2018
B/o
eha

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.733 and 769 of 2018

Dt. 09.04.2018

eha

