

HON'BLE SRI JUSTICE S.V. BHATT

C.R.P.No.2416 OF 2017

ORDER:

Heard learned counsel and perused the record.

Second plaintiff is the revision petitioner. O.S.No.102 of 2011 is filed for the relief of declaration of title and recovery of possession. The revision petitioner and the 5th respondent filed I.A.No.97 of 2017 to recall D.W.1 for cross-examination by the counsel appearing for the plaintiffs. Through the order impugned in the revision, the prayer for recalling D.W.1 was rejected. Hence, the revision.

Mr.L.Prabhakar Reddy, counsel for revision petitioner, contends that right to cross examine is a valuable right forming part of trial in a suit. Assuming that a few lapses can be pointed out against the conduct of litigation by the plaintiffs, the trial Court ought to have examined putting the revision petitioner and 5th respondent on terms and afforded opportunity to cross examine D.W.1. He further submits that this Court if considers recalling D.W.1, subject to such terms as are imposed, the cross-examination would be conducted within the time frame stipulated by this Court. Hence, he prays for setting aside the order impugned in the revision.

Mr.V.V.Ramana Rao, counsel for respondents, contends that the revision petitioner unless and until points out an illegality warranting interference of this Court under Article 227 of the Constitution of India cannot be allowed to pray for recalling D.W.1 by imposing some conditions. Mr.Ramana Rao reads the order impugned in the revision and contends that innumerable

opportunities were given and D.W.1 was not cross examined and/or at least an application is filed within reasonable time from the date of closing the evidence of D.W.1.

The prayer for recalling a witness for further examination either chief or cross is normally considered by the trial Courts to further the objective of fair trial and to meet the ends of justice. For invoking the jurisdiction or inspiring the Court to exercise the discretion in matters concerning discretionary relief, a party must act with diligence and must satisfy the Court that an omission in the conduct of trial is beyond his reach or circumstances. The converse to the above narration is that the party, if comes to Court in a casual and complacent manner, the Court ought not to exercise its discretion or jurisdiction in favour of such party, particularly to the prejudice of the contesting respondents or the ongoing trial. In this background, let me refer to the circumstances which disentitle for any relief either in the IA or revision. The chief examination affidavit of D.W.1 was filed into Court on 29.10.2014. On 22.04.2015, after accommodating 12 adjournments, the trial Court was compelled to close the evidence of D.W.1. On 10.02.2017, the present application is filed for recalling D.W.1. From the above, it is clear that the revision petitioner did not act with required diligence. On the other hand, the revision petitioner is complacently participating in the trial. The findings recorded do not warrant interference in the discretion exercised by the learned trial Judge.

The revision fails and is, accordingly, dismissed. The suit is of the year 2011. At the instance of revision petitioner, the proceedings have been stayed for considerable time. The learned trial Judge, hence, considers expediting the hearing of the suit as expeditiously as possible preferably within two months from the date of receipt of a copy of this order.

The parties if do not cooperate with the trial Court in the fair opportunity afforded for conducting the trial, the learned trial Judge is given liberty to give reasons and proceed in accordance with law. There shall be no order as to costs.

Pending miscellaneous petitions, if any, stand closed.

30th August, 2018
Lrkm



S.V.BHATT, J

