

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.Nos.3695, 3696 and 3730 of 2017

COMMON ORDER

Since all these revision petitions under Article 227 of the Constitution of India are filed questioning the docket orders dated 29.06.2017 passed in the three petitions filed under order XVIII Rule 17 and under Section 151 of C.P.C., and under Order VII Rule 14(2) CPC in O.P.No.271 of 2013 by the XIV Additional District Judge-cum-Family Court, Vijayawada, they are being disposed of by this common order.

2. The petitioner herein filed three petitions in O.P.No.271 of 2013 to reopen the evidence of petitioner for further examination, to recall the witness under Order XVIII Rule 17 and under Section 151 of CPC and finally, to receive the documents set out in the list under Order VII Rule 14(2) of CPC and mark them as exhibits. The petitioner filed said O.P., under Section 13 of Hindu Marriage Act, for dissolution of marriage by granting a decree of divorce and the said petition was posted for pronouncement of the judgment. Before pronouncement of the judgment, the petitioner came to know that some of the documents are required to be filed as those documents were not filed earlier during examination of P.W.1 due to oversight of the counsel appearing and recently, as he was advised to file those documents to prove his case, he filed the petitions to reopen the evidence of P.W.1, recall the witness and receive the documents set out in the list i.e., divorce papers signed and sent by respondent to

petitioner dated 26.07.2012, printed copy of SMS sent by respondent to the petitioner through cell phone, dated 26.07.2012 and DBS Bank account statement of respondent dated 24.07.2012.

3. The respondent filed counter denying the material allegations, *inter alia*, contending that there are no grounds much less sufficient grounds to reopen the evidence when the OP was posted for pronouncement of judgment, and in the absence of any explanation for the delay, the petitions cannot be allowed and sought for dismissal of those applications filed by petitioner.

4. Upon hearing argument of both the counsel, the trial Court dismissed all the three petitions assigning its own reasons. Aggrieved by the same, the present revisions are filed, mainly on the ground that the documents set out in the list by the petitioner are necessary to establish his case and the trial Court failed to consider the necessity to reopen, recall the evidence of P.W.1 and to mark the documents, which are fatal to the case of petitioner and denial of opportunity to bring the evidence on record is contrary to the principles of natural justice and therefore, the Court below has committed an error in dismissing the petitions and prayed to set aside the orders passed by the Court below.

5. During hearing, the counsel for petitioner reiterated the contentions, whereas, the counsel for respondent supported the orders passed by the Court below.

6. Considering rival contentions and perusing the material available on record, the points for consideration are:

“(i) Whether the evidence of petitioner be reopened when the OP was posted for pronouncement of judgment?”

“(ii) Whether the documents set out in the list can be received at the stage when the OP was posted for pronouncement of judgment, by exercising discretion under order VII Rule 14 of CPC?”

“(iii) Whether P.W.1 be recalled to mark the documents exercising power under Order XVIII Rule 17 of CPC?”.

7. **Point No.1:**

I.A.No.581 of 2017 in O.P.No.271 of 2013 is filed for reopening the evidence of P.W.1 while admitting that the main OP, which was filed for divorce under Section 13 of the Hindu Marriage Act, was posted for pronouncement of judgment, on the ground that the petitioner could not file certain documents, but recently, the counsel advised him to file those documents. But, such power cannot be exercised on mere asking, more particularly, when the OP was posted for pronouncement of judgment. This question is squarely covered by the judgments of the Apex Court in **Arjun Singh v. Mohindra Kumar and others**¹ and **Bagai Construction through its Proprietor Lalit Bagai v. Gupta Building Material Store**².

8. In **Arjun Singh's** case, referred supra, the Apex Court considered at what stage the application for reopening can be entertained and held as follows:

¹ AIR 1964 SC 993

² (2013) 14 SCC 1

“So far as the case before us is concerned the order under appeal cannot be sustained even on the basis that the finding recorded in disposing of an application under O. IX, r. 7 would operate as res judicata when the same question of fact is raised in a subsequent application to set aside an ex parte decree under O. IX, r. 13. This is because it is not disputed that in order to operate as res judicata, the court dealing with the first matter must have had jurisdiction and competency to entertain and decide the issue. Adverting to the facts of the present appeal, this would primarily turn upon the proper construction of the terms of O. IX, r. 7. The opening words of that rule are, as already seen, 'Where the Court has adjourned the hearing of the suit ex parte'. Now, what do these words mean ? Obviously they assume that there is to be "a hearing" on the date to which the suit stands adjourned. If the entirety of the "hearing" of a suit has been completed and the Court being competent to pronounce judgment then and there, adjourns the suit merely for the purpose of pronouncing judgment under O. XX, r. 1, there is clearly no adjournment of "the hearing" of the suit, for there is nothing more to be heard in the suit. It was precisely this idea that was expressed by the learned Civil Judge when he stated that having regard to the stage which the suit had reached the only proceeding in which the appellant could participate was to bear the judgment pronounced and that on the terms of rules 6 & 7 he would permit him to do that. If, therefore, the hearing was completed and the suit was not "adjourned for hearing", O. IX, r. 7 could have no application and the matter would stand at the stage of O. IX, r. 6 to be followed up by the passing of an ex parte decree making r. 13 the only provision in order IX applicable. If this were the correct position, it would automatically follow that the learned Civil Judge would have no jurisdiction to entertain the application dated May 31, 1958 purporting to be under O. IX, r. 7, or pass any order thereon on the merits. This in its turn would lead to the result that the application under O. IX, r. 13 was not only competent but had to be heard on the merits without reference to the findings contained in the previous order”

9. In **Bagai Construction's** case, referred supra, also the same question came up and the Apex Court held as under:

“The perusal of the materials placed by the Plaintiff which are intended to be marked as bills have already been mentioned by the Plaintiff in its statement of account but the original bills have not been placed on record by the Plaintiff till the date of filing of such application. It is further seen that during the entire trial, those documents have remained in exclusive possession of the Plaintiff but for the reasons known to it, still the Plaintiff has not placed these bills on record. In such circumstance, as rightly observed by the trial Court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of judgment, we are of the view that the Plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him. As rightly observed by the trial Court, there is no acceptable reason or cause which has been shown by the Plaintiff as to why these documents were not placed on record by the Plaintiff during the entire trial. Unfortunately, the High Court taking note of the words "at any stage" occurring in Order XVIII Rule 17 casually set aside the order of the trial Court, allowed those applications and permitted the Plaintiff to place on record certain bills and also granted permission to recall PW-1 to prove those bills. Though power Under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of the court and Court can exercise its discretion to permit reopening of evidence or recalling of witness for further examination/cross-examination after evidence led by the parties, in the light of the information as

shown in the order of the trial Court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 of Code of Civil Procedure, the Plaintiff cannot be permitted.

After change of various provisions by way of amendment in the Code of Civil Procedure, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the Plaintiff has filed those two applications before the trial Court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the Plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the Plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the Plaintiff, still Plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the Plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 Code of Civil Procedure.”

10. Thus, from the law declared by the Apex Court in the two judgments referred supra, Order XVIII Rule 17 of CPC permits the Court to reopen and recall any witness at any stage of the suit for the purpose of examination, re-examination etc. But, that does not mean, when the OP was reserved for judgment or posted for pronouncement of judgment, the Court cannot order for reopening the evidence by exercising power under Section 151 of CPC. Even otherwise, the entire affidavit is silent as to the sufficient cause which prevented the petitioner from filing the documents and petition earlier before the closer of the evidence for the said purpose i.e., recall and receive the documents etc. In the absence of any specific reason which prevented the petitioner from filing these petitions earlier before the petition was adjourned for pronouncement of judgment, on mere asking, the evidence cannot be reopened without any cause much less sufficient cause. Therefore, at the stage when

the OP was posted for pronouncement of judgment or order, the Court cannot exercise power under Section 151 of CPC to reopen the evidence in view of law declared by the Apex Court in **Arjun Singh's case and Bagai Construction's case**, referred supra. Hence, I find no ground to interfere with the orders impugned, by exercising power under Article 227 of the Constitution of India and consequently, the revisions are devoid of merit and deserve to be dismissed. The point is answered accordingly.

11. **POINT Nos.2 and 3:**

The other two petitions i.e., I.A.Nos.579 and 580 of 2017 in O.P.No.271 of 2013 are filed for receiving the documents and for recalling of P.W.1. The reason is one and the same. But the Court can exercise such power only in exceptional circumstances subject to compliance of the Order VII Rule 14(2) of CPC. But the petitioner did not annex the documents listed with the petition and it is a requirement to file all the documents sued upon or relied upon along with the list, and if any such document is not readily available, the petitioner shall disclose where such document is available etc., as required under sub-rule 3 of Rule 14 Order VII of CPC. But the petitioner did not explain any reason as to why those documents could not be secured and what had happened at the time of filing petition to furnish those documents and whether they were available with the petitioner or somewhere else.

12. In any view of the matter, in the absence of any reason for failure to file the documents along with the petition and explanation as to non-availability of the documents set out in the list, the

documents cannot be received at the belated stage when the OP was posted for pronouncement of judgment. Therefore, I am not inclined to exercise discretion to receive the documents set out in the list. The trial Court has rightly declined the relief in the said petitions by the orders impugned, as it is free from any legal infirmity warranting interference of this Court.

13. In view of discussion on two applications i.e., reopening and receiving documents under Section 151 of CPC and Order VII Rule 14 (2) of CPC, the question of recall of P.W.1 does not arise, even otherwise, the petitions are bereft of any merit for recalling the evidence of P.W.1 and marking the documents set out in the list, but as the evidence was not reopened and the documents set out in the list were not received, the question of recalling the witness by exercising power under Order XVIII Rule 17 of CPC does not arise.

14. In view of the law declared by the Apex Court, I am totally agreeing with the reasons recorded by the Court below and all the revision petitions are devoid of merits.

15. In the result, the Civil Revision Petitions are dismissed, confirming the orders passed by the Court below. No order as to costs. Miscellaneous petitions, if any, pending in these revisions shall stand dismissed.

M. SATYANARAYANA MURTHY, J

20th February, 2018

sj