

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.1505 of 2018

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India assailing the order dated 19.01.2018 passed in I.A.No.587 of 2017 in O.S.No.24 of 2016 on the file of the Court of IV Senior Civil Judge, City Civil Court, at Hyderabad.

2. Heard the learned counsel appearing for both the parties.

3. A perusal of the record reveals that the respondent filed O.S.No.24 of 2016 on the file of the Court of IV Senior Civil Judge, City Civil Court, at Hyderabad against the petitioners for recovery of amount. Chief-examination affidavit of P.W.1 was filed before the trial Court. For one reason or the other, the petitioners did not choose to cross-examine the witness i.e. P.W.1, therefore, the cross-examination of P.W.1 was recorded as 'NIL'. Thereafter, petitioners filed petition under Order 18 Rule 17 read with Section 151 CPC to recall P.W.1. The trial Court after affording reasonable opportunity to both parties, dismissed the petition. Hence, the revision.

4. As rightly pointed out by the learned counsel for the respondent, on one pretext or the other the petitioners did not choose to cross-examine P.W.1, who is a bank employee. The trial Court having no other alternative, recorded the cross-examination of P.W.1 as 'NIL'. It is needless to say that the very purpose of cross-examination of a witness is to elicit the truth.

If no opportunity was given to the petitioners, it may not be possible for them to substantiate the stand taken by them in their written statement. The Court has to take into consideration the prejudice likely to be caused to the parties to the proceedings while deciding the interlocutory applications of this nature. There is no fault on the part of the respondent for closing the cross-examination of P.W.1.

5. At the time of arguments, learned counsel for the respondent submitted that P.W.1 was transferred to Guntur. If the petition is allowed without any conditions, the respondent has to bear the expenses of P.W.1 to attend the Court at Hyderabad.

6. Taking into consideration the facts and circumstances of the case, this Court is of a considered view that it is a fit case to allow the petition, but by imposing some conditions.

7. In the result, the civil revision petition is allowed setting aside the order dated 19.01.2018 passed in I.A.No.587 of 2017 in O.S.No.24 of 2016 on the file of the Court of IV Senior Civil Judge, City Civil Court, at Hyderabad. Consequently, I.A.No.587 of 2017 is allowed recalling P.W.1 for cross-examination on a condition of petitioners paying an amount of Rs.2,500/- (Rupees two thousand and five hundred only) to P.W.1 towards transport and other incidental expenses. The petitioners are further directed to cross-examine P.W.1 on the day fixed by the trial Court, failing which, the trial Court is at liberty to proceed further in accordance with law. The trial

Court is hereby directed to permit the petitioners to cross-examine P.W.1 on payment of costs only. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

19th July 2018

Rns



