

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.1559 AND 1574 OF 2018

COMMON ORDER:

Both these Civil Revision Petitions, under Article 227 of the Constitution of India, is filed by the petitioners - defendants challenging the orders, both dated 09.02.2018, in I.A. Nos.49 of 2018 and 48 of 2018 in O.S. No.80 of 2016 passed by the learned Principal Junior Civil Judge at Kalwakurthy, whereby the petitions filed under Section 151 of the Code of Civil Procedure, 1908 (for short 'Code') and Under Order XVIII, Rule 17 of the Code to reopen the suit from the stage of arguments and to recall DW.3 for marking of documents, respectively, were dismissed on the ground that the reason assigned by the petitioners herein is not sufficient and that they did not explain the nature of documents to be marked on reopening the evidence from their side and that it is belated.

2. Aggrieved by the said orders, the present revisions are filed on various grounds and finally requested to set aside the orders under challenge.

3. The petitioners, who are defendants in the aforesaid suit, filed two applications to reopen the case and to recall DW.3 on the ground that the documents, which were marked as Exs.B-1 to B-14 in I.A. No.213 of 2006, were not marked in the suit during trial and, therefore, it is unintentional and requested to permit them to mark the documents by recalling DW.3 on reopening the evidence. But, the

petitions were based on raising several contentions, more particularly the delay in filing the petitions, and no satisfactory explanation was offered for failure to mark the documents etc., accepting the contention of the respondents, the trial Court dismissed both the petitions.

4. During hearing, learned counsel for the petitioners, Sri J. Janaki Rami Reddy, requested to afford an opportunity only for a limited purpose of marking the documents Exs.B-1 to B-14, subject to giving opportunity to the respondents - plaintiffs to cross-examine the witness only on Exs.B-1 to B-14.

5. According to Order XVIII, Rule 17 of the Code, at any stage of the proceedings during inquiry or trial, the Court may recall any witness on an application of either of the parties or *suo motu*. Therefore, the power conferred on the Court is unlimited and the Court can exercise power to meet the ends of justice, affording reasonable opportunity to both parties.

6. Undoubtedly, the petitioners are aware of the documents marked in I.A. No.213 of 2006, but for one reason or the other, the documents were not marked in the suit. Though, it is a suit of 2006, if limited opportunity is afforded to the petitioners - defendants by reopening the evidence on their side and recalling DW.3 for marking Exs.B-1 to B-14, which were marked in I.A. No.213 of 2006, and on marking the documents, the plaintiffs are entitled to cross-examine the witness with reference to the documents it would be met ends of

justice and as it is a suit of 2006, I deem it appropriate to direct the trial Court to dispose of the suit within a month from the date of receipt of a copy of the order.

7. With the above direction, both the Civil Revision Petitions are allowed, setting aside the orders, dated 09.02.2018, in I.A. Nos.49 of 2018 and 48 of 2018 in O.S. No.80 of 2016 passed by the learned Principal Junior Civil Judge at Kalwakurthy, and affording opportunity to the defendants to recall DW.3 for limited purpose of marking Exs.B-1 to B-14, which were marked in I.A. No.213 of 2006, while permitting the plaintiffs to cross-examine the witness with reference to the said documents. However, there shall be no order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in the present revisions, stand closed.

M. SATYANARAYANA MURTHY, J

October 31, 2018
Mgr