

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION Nos.5276 and 5298 of 2017

COMMON ORDER:

1) C.R.P.No.5276 of 2017 is filed, aggrieved by the order dated 20.07.2017, passed in I.A.No.151 of 2017 in O.S.No.179 of 2014 on the file of the Family Court-cum-IX Additional District and Sessions Court, East Godavari, Rajamahendravaram, wherein an application filed to recall PWs.1, 3 and 4 for the purpose of further cross-examination was allowed. C.R.P.No.5298 of 2017 is filed, aggrieved by the order dated 20.07.2017, passed in I.A.No.152 of 2017 in O.S.No.179 of 2014 on the file of the Family Court-cum-IX Additional District and Sessions Court, East Godavari, Rajamahendravaram, wherein an application filed to re-open the evidence of plaintiffs for the purpose of further cross-examination of PW.1, 3 and 4 was allowed.

2) Since the issues involved in both the Civil Revision Petitions filed under Article 227 of the Constitution of India are interconnected, they are being disposed of by this common order.

3) The facts in issue are as under:

The petitioners herein filed O.S.No.179 of 2014 seeking specific performance of an agreement of sale dated 27.12.2013. The defendant filed written statement denying the execution of the agreement of sale contending that the same is a rank forgery.

PWs.1 to 4 were cross-examined by the previous counsel of the defendant, but he did not confront some material points basing on a document. As such, the defendant filed the present petitions to re-open and recall PWs.1, 3 and 4 for the purpose of their further cross-examination.

4) The plaintiffs filed counter contending that the cross examination of PWs.1, 3 and 4 was done earlier and the evidence of plaintiffs' side was closed and no reasonable cause is made out to re-open the evidence of plaintiffs.

5) After considering the rival submissions made, the trial Court allowed both the petitions. Challenging the same the present revisions came to be filed by the plaintiffs.

6) Learned counsel for the petitioners mainly contended that the present petitions came to be filed only to fill up the lacunas and no specific reasons are assigned to recall the witnesses. He further submits that the defendant filed the present petitions only to drag on the suit proceedings and to harass the plaintiffs.

7) Learned counsel for the respondent/defendant would submit that grave prejudice would be caused if the defendant is denied an opportunity to cross examine PWs.1, 3 and 4, as such the trial Court exercised its discretion and allowed the petitions. He further submits that having regard to the nature of the suit filed, giving one more opportunity to the respondent/ defendant to cross examine PWs.1, 3 and 4, would not cause any prejudice.

8) The issue with regard to recalling of witness and re-opening of case came up for consideration in number of cases.

9) It has to be seen that Order XVIII Rule 17 makes it clear that the Court may at any stage of a suit recall any witness. Thus there is no embargo for the Court to recall a witness, after the closure of the evidence. Even after closure of the evidence of plaintiff or the defendants or of both the parties, the parties may approach the Court to reopen the case for further evidence and it is the discretion of the Court to allow any application filed under Order XVIII Rule 17 of C.P.C. However, the discretion has to be exercised having regard to the facts and circumstances of each case.

10) In *Rouf and Sons Estates (Regd.) Firm, Kadapa District and others v. Palem Mallikarjuna Reddy and others*¹ a learned Single Judge of this Court held as under:

“Even though the petitioners have failed to assign proper reasons and substantiate the pleas raised by them by adducing any evidence, as opined by the Court below, giving one opportunity to them to adduce further evidence will help the Court to determine the issues involved in the suit in a proper and comprehensive manner.”

11) Having regard to the judgment referred to above and taking into consideration the nature of suit, this Court is of the view that giving an opportunity to cross-examine a witness so as to bring out the truth warrants no interference.

¹ (2012) 5 ALD 59

12) Accordingly, both the Civil Revision Petitions are dismissed.

There shall be no order as to costs.

13) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

29.03.2018
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