

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NOS.4140 AND 4147 OF 2017

COMMON ORDER

The petitioners in these two revisions filed under Article 227 of the Constitution are defendants 2 to 4 in O.S.No.30 of 2015 on the file of the learned Junior Civil Judge, Chevella, Ranga Reddy District. Rejection of their request to further cross-examine P.W.1 and to undertake cross-examination of P.Ws.2 and 3 by the trial Court is the cause for grievance. C.R.P.No.4140 of 2017 filed by them arises out of the docket order dated 06.06.2017 passed by the trial Court refusing their request for deferring further cross-examination of P.W.1, while C.R.P.No.4147 of 2017 was preferred by them in relation to the daily status proceedings dated 29.06.2017 rejecting their request to defer cross-examination of P.Ws.2 and 3.

By order dated 18.08.2017 passed in C.R.P.M.P.No.5448 of 2017 in C.R.P.No.4147 of 2017, this Court took note of the fact that the affidavits in lieu of chief-examination of P.Ws.2 and 3 were supplied to the learned counsel for defendants 2 to 4 only on 29.06.2017, yet the trial Court refused to adjourn the case on that day to enable them to cross-examine those witnesses, and granted interim stay of further proceedings in the suit.

Notice having been ordered, Sri M.R.K.Chakravarthy, learned counsel, entered appearance for respondent 1 in both the revisions, the plaintiff in the suit. Respondent 2 herein, defendant 1 in the suit, is not a contesting party in these revisions.

Sri I.V.Radhakrishna Murthy, learned counsel for the petitioners/defendants 2 to 4, would point out that, in the docket order dated 06.06.2017, the trial Court opined that his clients had

availed sufficient time to peruse the documents and prepare for the cross-examination of the witness but had failed to complete such cross-examination on that day. Learned counsel would assert that an adjournment was sought only to the next day to complete the cross-examination but the trial Court was adamant and closed the evidence of P.W.1. It was adjourned to 29.06.2017 for further examination of the plaintiff's witnesses. He would further point out that P.W.1 was examined in chief on 06.01.2017 and 27.03.2017 and the matter was posted for his cross-examination on 11.04.2017 and thereafter, on 18.04.2017. It was adjourned to 02.05.2017 at the request of the counsel for the defendants on payment of costs. On that day, the costs were paid and, according to Sri I.V.Radhakrishna Murthy, learned counsel, the defendants were ready to cross-examine P.W.1 but it was the trial Court that adjourned the matter to 06.06.2017. On that date, the cross-examination was done in part but as P.W.1 had to be confronted with certain documents, a request was made for an adjournment to the next day but this request was denied. Perusal of the record bears out the aforestated sequence of events.

As regards the developments that took place on 29.06.2017, the daily status proceedings dated 29.06.2017 placed on record indicate that P.Ws.2 and 3 were present and were examined on their affidavits in lieu of chief-examination on that day. Learned counsel for defendants 2 to 4 is stated to have asked for the matter to be kept aside for cross-examination of these witnesses but at 3.00 PM, he sought time on the ground that he had received the evidence affidavits of the two witnesses only on that day. The trial Court however opined that as the counsel and the witnesses were present, no circumstances were made out to defer the cross-examination,

recorded the same as nil and adjourned the matter for the defendants' evidence.

Sri M.R.K.Chakravarthy, learned counsel, would submit that once the evidence of P.W.1 was closed, the proper remedy for the petitioners/defendants 2 to 4 was to file an application under Order 18 Rule 17 CPC to recall the said witness but, instead of doing so, they took recourse to these revision petitions under Article 227 of the Constitution. He would state that the delay on their part in filing the revisions also needs to be taken note of as it demonstrates their clear intention to drag on the proceedings. He would further submit that as a certified copy of the docket order dated 29.06.2017 was not even filed, the second revision ought not to be entertained.

In reply, Sri I.V.Radhakrishna Murthy, learned counsel, would submit that as the trial Court was wholly unjustified in denying the request of the petitioners/defendants 2 to 4 to defer the cross-examination of P.W.1 to the next day, this Court, in exercise of its power of judicial superintendence under Article 227 of the Constitution, would be entitled to set right this error on the part of the trial Court. He would further state that if an opportunity is now given to his clients to cross-examine the plaintiff's witnesses, they would make use of the same without fail and would not cause any delay. As regards the failure on their part to file a certified copy of the docket order dated 29.06.2017, the learned counsel would point out that when an application was made for the same, it was returned with the endorsement 'Under which provision of law, docket order will be issued.'

Surprisingly, the very same trial Court had earlier issued a certified copy of the docket order dated 06.06.2017 but came up with the above objection when a certified copy of the later docket order

dated 29.06.2017 was applied for. This clearly indicates that the trial Court was not just and impartial while dealing with the petitioners/defendants 2 to 4, be it for whatever reason.

On an analysis of the aforestated developments in the suit, this Court is of the considered opinion that the trial Court erred in rejecting the request of the petitioners/defendants 2 to 4 for an adjournment to the next day to complete the cross-examination of P.W.1. Admittedly, his cross-examination was completed in part on 06.06.2017 and an adjournment to the next day would not have been unjustified. All the more so, as it was the trial Court that had failed to take up the cross-examination of the witness on 02.05.2017.

As regards the cross examination of P.Ws.2 and 3, the daily status proceedings dated 29.06.2017 clearly demonstrate the prejudice of the trial Court against the petitioners/defendants 2 to 4. Admittedly, the affidavits in lieu of chief-examination of these two witnesses were served upon the learned counsel for the petitioners/defendants 2 to 4 only on that day. His request for deferring their cross-examination was therefore fully justified. Rejecting this request, the trial Court baldly concluded that as the counsel and the witnesses were both present, no circumstances were made out to defer their cross-examination. When the affidavits in lieu of chief-examination were served only on that day, the counsel was entitled to consult with his clients as to how he should go about cross-examining those witnesses. Denial of such an opportunity amounts to violation of due procedure.

The orders under revision therefore cannot be countenanced. However, as rightly pointed out by Sri M.R.K.Chakravarthy, learned counsel, it would not be open to the petitioners/defendants 2 to 4 to protract the matter by seeking further adjournments to complete the

cross-examination of these witnesses. They shall therefore avail the opportunity afforded by the trial Court to do so without fail and without seeking any adjournment.

The civil revision petitions are accordingly allowed. The trial Court shall permit the petitioners/defendants 2 to 4 to cross-examine P.W.1, PW.2 and P.W.3 by fixing specific dates for that purpose upon consultation with the learned counsel for the parties. On those dates, the cross-examination, as scheduled, shall be done and concluded by the learned counsel for the petitioners/defendants 2 to 4 without fail. Further, as there is patent delay on the part of the petitioners/defendants 2 to 4 in completing the cross-examination of P.W.1, granting an opportunity to them at this stage to do so would necessarily have to be upon imposition of costs. They shall accordingly pay costs of Rs.500/- (Rupees Five Hundred only) to respondent 1/plaintiff within one week from today and on proof of such payment being produced, the trial Court shall permit them to further cross-examine P.W.1 and thereafter, P.Ws. 2 and 3.

Pending miscellaneous petitions, if any, in both cases shall stand closed in the light of this final order.

SANJAY KUMAR, J

5th JANUARY, 2018

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