

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

C.R.P.No.1982 of 2018

ORDER

This civil revision petition is filed by petitioners/defendants 1 to 3 aggrieved by the order dated 03.11.2017 passed in I.A.No.280 of 2017 in O.S.No.127 of 2012 by the Junior Civil Judge, Nakrekal, dismissing the petition filed under Order 18 Rule 17 of CPC to recall P.Ws.1 and 2 for cross-examination as they were not cross-examined because of the prolonged illness of their counsel.

2. The suit in O.S.No.127 of 2012 is filed by the first respondent/plaintiff for perpetual injunction, wherein P.Ws.1 and 2 were examined. The defendants could not cross-examine P.Ws.1 and 2 as their counsel was suffering from prolonged illness. Hence, they filed I.A.No.280 of 2017 to recall P.Ws.1 and 2 and the same was dismissed by the trial Court with the observation that P.W.1's chief examination was held about 20 months back and there was inordinate delay in filing the application. Hence, the instant civil revision petition is filed.

3. The submission of the learned counsel for petitioners is that P.Ws.1 and 2 are prime witnesses and unless they are cross-examined, it will be difficult for the defendants to establish their case and there was no wilful delay on their part as their counsel fell seriously ill and therefore, they could not cross-examine them and hence, permission may be given to them to cross-examine P.Ws.1 and 2 and they would abide by the conditions imposed by this Court.

4. Learned counsel for the respondents left the matter to the discretion of this Court.

5. Having regard to the fact that P.Ws.1 and 2 are prime witnesses and unless the petitioners/defendants are afforded an opportunity to cross-examine them, injustice would be caused to them, this Court, in the interest of justice, considers it appropriate to allow the petition, however on imposing suitable costs.

6. In the result, the Civil Revision Petition is allowed, setting aside the impugned order and the trial Court is directed to fix two consecutive dates for cross-examination of P.Ws.1 and 2 and intimate the parties in advance. The petitioners/defendants shall complete the cross-examination of P.Ws.1 and 2 in those two days fixed by the Court. Further, the petitioners shall pay costs of Rs.1,000/- (Rupees one thousand only) to the Mandal Legal Services Authority, Nakrekal, on or before 24.07.2018. No order as to costs. As a sequel there to, miscellaneous applications, if any pending in this petition, shall stand closed.

U. DURGA PRASAD RAO, J

17th July, 2018

Note:
Issue CC tomorrow.

sj