

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.1702, 1703 & 1897 OF 2015

COMMON ORDER:

These three civil revision petitions, under Article 227 of the Constitution of India, are filed challenging the orders dated 03.02.2015 in I.A. Nos.780, 781 and 782 of 2014 in O.S. No.56 of 2010 passed by the I Additional District Judge at Karimnagar, whereby the learned Judge allowed the applications filed under Section 151, Rule 14(3) of Order VII and Rule 17 of Order XVIII, of the Code of Civil Procedure, 1908 (for short 'CPC').

The parties will hereinafter be referred to as they were arrayed before the court below for the sake of convenience.

I.A. No.780 of 2014 is filed under Section 151 of CPC to reopen the evidence, I.A. No.781 of 2014 is filed under Rule 17 of Order XVIII of CPC to recall of P.W.1 for marking the documents and I.A. No.782 of 2014 is filed to receive documents set out in the list after condoning the delay, at the stage of argument.

These three petitions are filed with identical allegations that the evidence of plaintiffs and defendants was closed and posted for argument. At this stage, the petitioners noticed that some of the documents were not marked viz., mutation entries in Faisal Patti for the land in Sy.No.693, for the year 1968-69 and the documents are necessary to prove their case. The documents could not be filed earlier as the same were misplaced in the office of the counsel and recently traced by the counsel, and therefore, it necessitated the petitioners to file these three petitions referred supra.

The respondents filed counter denying right to file such documents at the stage of argument while contending that Exs.A.1 to

A.8 were marked during the examination of P.W.1 and the allegation that the documents were misplaced at the office of the counsel is false, if so the petitioners can obtain certified copy of pahanies from Mandal Revenue Office, Manakondur and the petitioners did not disclose the date on which they were misplaced and how they are important for deciding the real controversy between the parties. Therefore, the petitioners cannot be permitted to file those documents and prayed for dismissal of the petitions.

The trial court, upon hearing argument of both the counsel, passed separate orders. But the effect of the orders is one and the same. The trial court has concluded that the reasons assigned by the petitioners are sufficient, to condone the delay in filing the documents at the stage of argument, exercising power under Rule 14(3) of Order VII of CPC. When the documents are received, the order passed to reopen the evidence and to recall the petitioners to mark those documents will come into affect.

Aggrieved by the orders passed by the court below in I.A. Nos.780, 781 and 782 of 2014, the respondents filed these three revision petitions contending that the evidence cannot be reopened when the suit was adjourned for argument and drawn the attention of this Court to the judgments of the Apex Court in **K.K. Velusamy v. N. Palanisamy¹** **Vadiraj Naggappa Vernekar (dead) through LRs v. Sharadchandra Prabhakar Gogate²** and **Gayatri v. M. Girish³**. Based on the principles laid down in the above judgments, the learned counsel for the respondents contended that the evidence of the petitioners cannot be reopened and witnesses cannot be recalled.

¹ (2011) 11 SCC 275

² (2009) 4 SCC 410

³ (2016) 3 CLJ (SC) 89

At the same time the power exercised by the court below under Rule 14(3) of Order VII of CPC is not in accordance with law. Similarly in the other revision against the order in I.A. No.781 of 2014, the counsel reiterated the said contention and requested to set aside the orders passed by the court below allowing these three revision petitions.

During hearing, the learned counsel for the petitioners contended that the documents are necessary for deciding the real controversy between the parties and apart from that the documents were already entrusted to the counsel on record, but they were misplaced in the office, however they were traced recently, therefore, the petitioners filed these petitions, requests to reopen the suit to mark those documents and to substantiate their contention in the main suit itself.

The main contention of the learned counsel for the petitioners is that a witness can be recalled at any stage including the stage when the suit is reserved for judgment by exercising power under Order XVIII Rule 17 C.P.C.

In **Vadiraj Nagappa Vernekar's**² case, the Apex Court though considered the scope of Order XVIII Rule 17 i.e. to recall of witness after examination is completed, the scheme and object and held that it is obvious that only after cross- examination of the witness that certain lapses in his evidence came to be noticed which impelled the appellant to file the application under Order XVIII Rule 17 CPC. Such a course of action which arises out of the fact situation in this case, does not make out a case for recall of a witness after his examination has been completed. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not

as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order XVIII Rule 17 CPC. The Supreme Court further held that it is now well settled that the power to recall any witness under Order XVIII Rule 17 CPC can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination. Of course, if the evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, it is always within the discretion of the Trial Court to permit recall of such a witness for re-examination with permission to the defendants to cross-examine the witness thereafter.

It is further held as follows:

“In the absence of any provision providing for reopening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required under Section 151, subject to its limitations, can be invoked in appropriate cases to reopen the evidence and/or recall witnesses for further examination. If there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under Section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose. (paras 12 and 14) The need for the court to act in a manner to achieve the ends of justice (subject to the need to comply with the law) does not end when arguments are heard and judgment is reserved. If there is abuse of the process of the court, or if interests of justice require the court to do something or take note of something, the discretion to do those things does not

disappear merely because the arguments are heard, either fully or partly. The convention that no application should be entertained once the trial or hearing is concluded and the case is reserved for judgment is a sound rule, but not a straitjacket formula. There can always be exceptions in exceptional or extra-ordinary circumstances, to meet the ends of justice and to prevent abuse of process of court, subject to the limitation recognized with reference to exercise of power under section 151 of the Code. Be that as it may. In this case, the applications were made before the conclusion of the arguments.” (para 15)

This inherent power of the court is not affected by the express power conferred upon the court under Order 18 Rule 17 of the Code to recall any witness to enable the Court to put such question to elicit any clarifications. The power to recall any witness under Order 17 Rule 17 can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any issue or doubt it may have in regard to the evidence led by the parties by recalling any witness so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions. However, this power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. Order 18 Rule 17 is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. (paras 11, 9 and 10).”

In the later judgment of the Apex Court in **Gayatri**³ case, the Apex Court relied on **Vadiraj Naggappa Vernekar**² case referred supra and highlighted the responsibility of the counsel appearing in

the suits before the Court while placing reliance on **Noor Mohammed v. Jethanand**⁴ commenting on the delay caused due to dilatory tactics adopted by the parties and the Court was compelled to say that:

“In a democratic set-up, intrinsic and embedded faith in the adjudicatory system is of seminal and pivotal concern. Delay gradually declines the citizenry faith in the system. It is the faith and faith alone that keeps the system alive. It provides oxygen constantly. Fragmentation of faith has the effect-potentiality to bring in a reasoned verdict from a temperate Judge but does not intend to and, rightly so, to guillotine much of time at the altar of reasons. Timely delivery of justice keeps the faith ingrained and establishes the sustained stability. Access to speedy justice is democracy and such a right is not only the creation of law but also a natural right. This right can be fully ripened by the requisite commitment of all concerned with the system. It cannot be regarded as a facet of Utopianism because such a thought is likely to make the right a mirage losing the centrality of purpose. Therefore, whoever has a role to play in the justice-dispensation system cannot be allowed to remotely conceive of a casual approach.

And, again:

Thus, from the aforesaid, it is clear as day that everyone involved in the system of dispensation of justice has to inspire the confidence of the common man in the effectiveness of the judicial system. Sustenance of faith has to be treated as spinal sans sympathy or indulgence. If someone considers the task to be Herculean, the same has to be performed with solemnity, for faith is the ‘elan vital’ of our system.”

However, it is evident from the record that the Advocate on record misplaced document and for the fault of Advocate, the parties shall not be put to any loss. Having consideration of the facts and circumstances, the trial court exercised the discretion under Rule 14(3) of Order VII, Section 151 and Rule 17 of Order XVIII, of CPC. When such discretionary order is passed, this court cannot interfere with such order while exercising power under Article 227 of the

⁴ (2013) 5 SCC 202

Constitution as held by the Apex Court in **Sadhana Lodh v. National Insurance Company Ltd. & Anr.**⁵ wherein it was held as follows:

“...the right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Article 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal.”

In **Raj Kumar Bhatia v. Subhash Chander Bhatia**⁶ the Full Bench of the Apex Court held as follows:

“.....in exercise of its jurisdiction under Article 227, the High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess the evidence upon which the inferior court or tribunal has passed an order.”

Thus the powers of this Court under Article 227 of the Constitution of India are limited though the powers are supervisory and such power can be exercised only to keep the subordinate Courts and Tribunals within its bounds.

In this case the court below did commit no error and on its elaborate discussion of the material, having concluded that the documents are necessary in deciding the real controversy and exercised its discretion since jurisdiction under Rule 17 of Order XVIII of CPC and Rule 14(3) of Order VII of CPC is purely discretionary in nature. Therefore, such discretionary order cannot be overturned or set aside by exercising power under Article 227 of the Constitution of India which is limited in nature.

Therefore, I find no ground to interfere with the finding recorded by the court below as the orders passed by the court are free from any illegality, warranting interference of this Court while exercising power

⁵ 2003(3) SCC 524

⁶ Civil Appeal No.19400 of 2017

under Article 227 of the constitution of India and these three revision petitions deserves to be dismissed.

In the result, these three civil revision petitions are dismissed, affirming the orders dated 03.02.2015 in I.A. Nos.780, 781 and 782 of 2014 in O.S. No.56 of 2010 on the file of I Additional District Judge at Karimnagar. There shall be no order as to costs.

Consequently, Miscellaneous petitions, if any, pending shall stand closed.

M.SATYANARAYANA MURTHY, J

27.02.2018
BV

