

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos. 3713 AND 3695 OF 2016

COMMON ORDER:

C.R.P.Nos. 3713 and 3695 of 2016 under Article 227 of the Constitution of India are filed by the petitioner-defendant challenging orders dated 18-07-2016 in I.A.Nos. 335 and 336 of 2016 in O.S.No. 73 of 2013 respectively on the file of the Court of Principal Senior Civil Judge at Gajuwaka (for short, 'the Court below').

2. The respondent-plaintiff filed suit O.S.No. 73 of 2013 on the file of the Court below against the petitioner-defendant for recovery of amount and after hearing arguments on both sides, the said suit is reserved for judgment. At that stage, the respondent has noticed that the petitioner has taken a plea that he has no capacity to lend amount to the petitioner. To prove the said fact that the respondent has capacity to lend amount to the petitioner, he filed the abovementioned applications to reopen and recall his evidence. The petitioner filed counters opposing the applications *inter alia* contending that he filed written statement long back raising a specific plea that the respondent has no capacity to lend such huge amount but the respondent filed the above applications to reopen and recall his evidence after closure of arguments and at that stage, evidence of parties cannot be reopened and witness cannot be recalled as there is nothing to be done by any of the parties to the suit except pronouncement of judgment by Presiding Officer of the Court and that there are no tenable grounds to reopen the evidence for adducing further evidence of the respondent or to recall P.W.1 for marking any documents and requested to dismiss the applications. Upon hearing arguments of both counsel, the Court below allowed the applications by the impugned orders. Aggrieved thereby, the present revisions are filed.

3. At the hearing, learned counsel for the petitioner has contended that when the suit is reserved for judgment, parties cannot be permitted to reopen their evidence and adduce any evidence or recall any witness who is already examined but the Court below did not consider the law laid down by the Apex Court in proper perspective and committed an error in allowing the applications. Learned counsel in support of his contention has placed reliance on **Arjun Singh Vs. Mohindra Kumar and others**¹. Whereas learned counsel for the respondent has supported the orders of the Court below and requested to dismiss the revisions confirming the orders passed by the Court below.

4. Considering rival contentions and perusing the material available on record, the point that arises for consideration is

"Whether the suit reserved for judgment after hearing arguments of both counsel be reopened for adducing further evidence and recalled for limited purpose of marking any documents by exercising power under Section 151 and Order XVIII Rule 17 of CPC?"

5. Undisputedly, the suit is filed by the respondent against the petitioner for recovery of money. The petitioner filed written statement in the year 2013, i.e. almost three years prior to filing the above applications, raising a specific plea that the respondent has no means to lend amount to him but the respondent did not take any steps even till completion of arguments and the suit is reserved for judgment. When the suit is reserved for judgment, the parties have no role in pronouncement of judgment and it is for the Presiding Officer of the Court to decide the case. The only reason assigned by the respondent is that he could not mark certain documents to establish his capacity to lend amount to the petitioner till the suit is reserved for judgment and he realized the mistake only after the suit is reserved for judgment. Therefore, the respondent wanted to

¹ AIR 1964 SC 993

adduce further evidence and recall P.W.1 for marking certain documents. As seen from Order XVIII Rule 17 of CPC, a witness can be recalled at any stage of suit or proceedings. In ***Vadiraj Nagappa Vernekar (dead) through L.Rs. Vs. Sharadchandra Prabhakar Gogate***², the Supreme Court though considered the scope of Order XVIII Rule 17 of CPC *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 of 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 XVIII Rule 17 of 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 of CPC. The Apex Court further held that it is now well settled that the power to recall any witness under Order XVIII Rule 17 of 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. The need for the Court to act in a manner to achieve the ends of justice (subject to the

² (2009) 4 SCC 410

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. In the later judgment in **Gayatri Vs. M.Girish**³, the Apex Court relied on **Vadiraj Naggappa Vernekar** (2nd *supra*) and highlighted the responsibility of counsel appearing in suits before trial Courts while placing reliance on **Noor Mohammed Vs. Jethanand**⁴ commenting on delay caused due to dilatory tactics adopted by parties. In earlier judgment in **Arjun Singh** (1st *supra*), a Full Bench of the Apex Court considered the circumstances under which evidence can be reopened and held that when suit is reserved for judgment, parties have no role to play in disposal of the suit and it is for the Presiding Officer to decide and pronounce judgment in accordance with law. If the principle laid down in the above judgment is applied, Court cannot exercise power under Order XVIII Rule 17 of CPC to recall any witness and reopen evidence of any witness.

6. Learned counsel for the respondent has highlighted the observations made in para No. 15 of the judgment in **K.K.Velusamy Vs. N.Palanisamy**⁵, where the Apex Court with the approval of the judgment in **Vadiraj Naggappa**

³ 2016 (3) CLJ (SC) 89

⁴ (2013) 5 SCC 202

⁵ (2011) 11 SCC 275

Vernekar (2nd *supra*) reiterated the same principle that the convention that no application should be entertained once trial or hearing is concluded and case is reserved for judgment is a sound rule but not a straitjacket formula and 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. Learned counsel has also drawn attention of this Court to para No. 10 of the judgment, where the Apex Court discussed about the scope of Order XVIII Rule 17 of CPC and held that Order XVIII Rule 17 of the Code 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. Order XVIII Rule 17 is primarily a provision enabling the Court to clarify any issue or doubt, by recalling any witness either *suo motu* or at the request of any party 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. The observations of the Apex Court are however of no assistance to the respondent since in the first sentence itself the Apex Court made it clear that it is not a provision intended to enable parties to recall any witnesses for their further examination in chief or cross-examination or to place additional material or evidence and only to clarify any issue or doubt. In the present facts of the case, the respondent himself was examined as P.W.1 and in cross-examination, certain questions were put to him as to his capacity to lend amount to the petitioner and he denied the same stating that he has capacity to lend amount to the petitioner as he went to Abu Dhabi and earned some amount of income through his employment. Therefore, the respondent

was conscious about the plea raised by the petitioner in the written statement and the answers given by the respondent in cross-examination indicate that he has capacity to lend amount to the petitioner but the same was not substantiated by any documentary evidence. To prove the factum of possessing means to lend amount to the petitioner, the respondent wanted to adduce additional evidence by recalling P.W.1 but it is not for clarifying any issue or doubt. If the observations made by the Apex Court in **K.K.Velusamy** (5th *supra*) relied upon by learned counsel for the respondent are applied, the reason assigned by the respondent is not a ground to recall P.W.1 for the purpose of marking documents as it amount to filling up *lacunae* in the evidence of the respondent which is impermissible under law and it is not for clarifying any issue or doubt and in addition to that, when the suit is reserved for judgment, it cannot be reopened for the purpose of adducing evidence as held by the Apex Court in **Arjun Singh** (1st *supra*).

7. For the aforementioned reasons, the orders of the Court below are erroneous and the same are liable to be set aside and are accordingly set aside.

8. The civil revision petitions are allowed. The Court below is directed to dispose of the suit uninfluenced by any of the findings recorded hereinabove. Pending miscellaneous petitions, if any, shall stand closed in consequence. No costs.

Date: 13-11-2018.

JSK

M.SATYANARAYANA MURTHY, J.