

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CRP Nos.2456, 2457 and 2458 of 2015

COMMON ORDER:

All these revisions are taken up for hearing together, as they arise out of the orders passed in the applications filed to reopen the evidence, to receive certain documents and to recall PW.1 for marking documents.

Three applications were filed in pending suit in OS No.206 of 2012 on the file of the Principal Junior Civil Judge, Proddatur. When the matter was at an advanced stage of hearing, IA No.192 of 2015 was filed to reopen the matter. This was dismissed by the lower Court. Aggrieved by the same, CRP No.2456 of 2015 was filed. IA No.193 of 2015 was filed to receive certain documents. This was dismissed and questioning the same, CRP No.2457 of 2015 was filed. IA No.199 of 2015 was filed to recall PW.1 for marking documents. This was dismissed and questioning the same, CRP No.2458 of 2015 was filed.

This Court after perusing the impugned orders in the said three IAs notices that IA No.193 of 2015 was dismissed and against the said order, CRP No.2457 of 2015 was filed. The other IA Nos.192 and 199 of 2015

were dismissed as infructuous, in view of the dismissal of IA No.193 of 2015. Therefore, CRP No.2457 of 2015 is taken up first for hearing, since the orders in other two revisions are consequential.

This Court has heard Sri J. Seshagiri Rao, learned counsel for the revision petitioner/plaintiff and Sri V. Nitesh, learned counsel for the respondents in all the revisions.

CRP No.2457 of 2015 arises out of the dismissal order dated 16.06.2015 passed in IA No.193 of 2015. IA No.193 of 2015 is filed for receiving certain documents, which were filed along with the application. The learned counsel for the revision petitioner argues that these documents are very essential for deciding his case. These documents were already marked, according to the affidavit in the suit OS No.205 of 2012, which is very similar to the present suit. The contention of the learned counsel is that these are certified copies of various documents, which can be received in evidence and subject to the cross-examination.

In reply thereto, the learned counsel for the respondents/defendants argues that as the revision petitioner did not produce the documents in time, more so during the course of the evidence of plaintiff's witness,

the lower Court rightly dismissed the applications. He submits that when the matter came up for arguments, an application in IA No.88 of 2015 was filed to club the suit OS No.206 of 2012 along with OS No.205 of 2012. That application was dismissed and therefore, to protract the trial, the present applications are filed to reopen, to recall PW.1 and to receive certain documents.

This Court has perused the order passed by the lower Court. This Court notices that in the impugned order, the cross-examination of DW.2 is mentioned as having been completed on 09.12.2014 and also notices that the documents proposed to be filed were confronted to DW.2 in the course of his cross-examination, but they were not admitted.

The lower Court itself noticed that the cross-examination of DW.2 was completed on 09.12.2014 and that the present application was filed on 17.04.2015. The reason given by the revision petitioner for the four months delay is that he was hoping that the suit OS No.206 of 2012 would be clubbed with another suit OS No.205 of 2012 and that orders will be passed in IA No.88 of 2015, which was filed to club both the suits (this order in IA No.88 of 2015 is the subject matter of another CRP No.2527 of 2015).

This Court after examining the order passed and after hearing both the learned counsel is of the opinion that these revision petitions deserve to be allowed. This application (IA No.193 of 2015) was rejected on the ground that there is delay. Admittedly, as can be seen from the impugned order, these documents were confronted to DW.2. As DW.2 did not admit the documents during the course of cross-examination, the revision petitioner wishes to mark the documents by himself. For the said purpose, this and the other applications are become necessary.

Another connected CRP No.2527 of 2015 is filed before this Court against the order passed in IA No.88 of 2015 in the very same suit. The said IA was filed to club the suit OS No.206 of 2012 with another suit OS No.205 of 2012. In that IA, the plaintiff wanted that both the suits can be tried together, as the documents are common. The respondents filed a counter in the lower Court stating that if the revision petitioner wants to refer the documents from OS No.205 of 2012, he should file an application and seek permission of the lower Court to mark those documents. Having said so, this Court is of the opinion that the respondents cannot now object to receive these documents.

This Court is of the opinion that the entire proceedings need not be stalled in this case. The lower Court should proceed with the trial by receiving the documents. The documents can be received subject any objections that may be raised. If the documents are marked and there is an improvement in the testimony of the witnesses or an attempt to fill up any gap, the same can be considered at the time of the final arguments. Except the objections with regard to stamp duty, penalty which have to be decided immediately, all other objections can be noted and the lower Court can proceed with the trial of the matter. Any requests for adjournments should be dealt with strictly by the lower Court and as per law. The lower Court is therefore directed to proceed with the suit in OS No.206 of 2012 after receiving the documents without in any way being influenced by what is stated in this order. The admissibility of the documents is a matter for the lower Court to decide. With these directions, CRP No.2457 of 2015 is allowed.

Since CRP No.2457 of 2015 is allowed, the other two CRPs (viz., CRP Nos.2456 and 2458 of 2015) are also allowed. The impugned orders in IA Nos.192, 193 and 199 of 2015 in OS N.206 of 2012 passed by the Principal

Junior Civil Judge, Proddatur are set aside and the same are also allowed. In the circumstances of the case, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in these revisions shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 05.10.2018
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