

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.4306 OF 2018

ORDER:

This revision is preferred under Article 227 of Constitution of India challenging the order dated 02.07.2018 in I.A.No.242 of 2017 in O.S.No.59 of 2012 passed by the Junior Civil Judge – cum – Judicial Magistrate of First Class, Kamalapuram, whereby the petition filed under Order XVIII Rule 17 of Code of Civil Procedure (for short, hereinafter, referred to as “C.P.C.”) was partly allowed permitting to recall D.W.1 for marking electricity bills on behalf of the petitioners/defendant Nos.1 and 2 while negating the relief to recall P.W.1 for further cross-examination.

The petitioners filed a petition under Order XVIII Rule 17 of C.P.C. and the specific reason mentioned in paragraph No.3 of the petition is as follows:

“I, submit that there is much necessity to mark the said electricity bills on our behalf in the suit for better appreciation of facts etc. These documents/electricity bills are most essence just to conclude our claim. The evidence of PW-1 and DW-1 was closed by this Hon'ble Court. I need to further cross examine PW-1 on certain important facts.”

The respondent/plaintiff filed counter denying all the material allegations and *inter alia* contending that the petition is vague and in the absence of specific ground, the petition cannot be allowed.

The trial Court upon hearing both the counsel allowed the petition in part and permitted to recall D.W.1 for limited purpose of marking electricity bills while refusing to recall P.W.1 as no other specific reason was mentioned for recall of P.W.1 in-detail.

Aggrieved by the said order, the present revision is filed under Article 227 of Constitution of India on various grounds. The main ground urged before this Court is that the petitioners have to put certain questions to P.W.1 as the counsel failed to elicit certain facts on the date of examination and if the witness is not recalled for further cross-examination, it would cause prejudice to the petitioners, thereby the order passed by the trial Court is erroneous and requested to set aside the order passed by the trial Court.

During hearing, learned counsel for the petitioner reiterated the same contentions as urged in the revision petition.

As seen from the allegations made in the affidavit extracted above, the reason assigned to recall P.W.1 is to cross-examine him on certain important facts. But on what aspect P.W.1 is required to be recalled and cross examined is not stated in the affidavit and the entire endeavour in the petition is that to mark electricity bills through P.W.1. Electricity bills sought to be marked are relating to D.W.1 and those documents are permitted to be marked through D.W.1 by the impugned order, but none of the documents need be confronted to P.W.1 in the evidence.

On vague allegations made in paragraph No.3 of the petition, the witness cannot be recalled on mere asking. Therefore, I find no legal infirmity warranting interference in the order passed by the trial Court since the trial Court rightly exercised its jurisdiction in negating the relief of recall of P.W.1 as the affidavit is bereft of any reason for such recall. Thereby, the order passed by the trial Court is confirmed. Consequently, the revision is liable to be dismissed.

In the result, the civil revision petition is dismissed without costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

10.08.2018
Ksp

