

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

C.R.P.No.6182 of 2018

Date: 28.11.2018

Between:

Sri Chuchikonda Nooka Raju,
S/o.Ramulu,
Hindu, Aged about 40 years,
residing at Allipuram Main Road,
Allipuram Ward,
Visakhapatnam.

... Petitioner

And

Sri Pitta Nooka Raju,
S/o. not known,
Hindu, Aged 50 years,
R/o.D.No.25-23-3,
Kandula Veedhi,
Visakhapatnam.

... Respondent

Counsel for the Petitioner : Mr. A.V.Sivaiah

Counsel for the Respondent : Mr.M.S.V.S.Sudha Rani

The Court made the following:

Order:

This civil revision petition is filed against order dated 20.09.2018 in I.A.No.429 of 2018 in O.S.No.704 of 2012 on the file of the VII Additional Senior Civil Judge, Visakhapatnam.

2. I have heard Mr.A.V.Sivaiah, learned counsel for the petitioner and Mrs.M.S.V.S.Sudha Rani, learned counsel for the respondent.

3. The petitioner filed the aforementioned suit for recovery of Rs.3,95,000 with subsequent interest and costs from the respondent. As neither the petitioner nor his counsel appeared on 20.08.2018, for cross examination of DW-1, the lower court has closed the evidence of DW-1, treating cross examination as 'nil'. Within a reasonable time thereafter, the petitioner has filed I.A.No.429 of 2018, to re-open the case for the purpose of cross-examination of DW-1. In the affidavit filed in support of this application, the petitioner has stated that while he was returning from outstation, his vehicle broke down and, therefore, he could not contact his counsel and represent in the Court when the case was called. The lower court however, has not accepted this explanation and dismissed I.A., with the cryptic observation that the petitioner has not filed any digital proof showing break down of his vehicle. In my opinion, the lower Court ought to have taken liberal approach in considering the application filed by the petitioner. Unless the petitioner was chronic defaulter in attending the court proceedings, a rigid view as adopted by the lower Court, is not

warranted. By dismissal of the application, the lower court has allowed further delay to be caused, with the petitioner approaching this Court and securing an order of stay. Instead, the Court below should have imposed reasonable condition for setting aside the order and posting the case peremptorily for cross-examination of DW-1. Such a rational approach would have avoided generation of needless litigation and occurrence of delay.

4. For the aforementioned reasons, the order of the lower court is set aside. I.A.No.429 of 2018 is allowed. The lower court is directed to fix a specific date for cross-examination of DW-1. On the date so fixed, DW-1 must be personally present and the petitioner's counsel must cross-examine the witness.

5. The civil revision petition is, accordingly, allowed.

6. As a sequel to the disposal of the civil revision petition, I.A.No.1 of 2018 is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Date: 28th November, 2018

msb

