

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P.NOS.6507 AND 6566 OF 2018

COMMON ORDER

Petitioner – firm in both the revisions, is the plaintiff. It filed suit in O.S.No.57 of 2011 on the file of X Additional District Judge, Tirupati for recovery of amount. The evidence of P.W.1 was completed and the case is coming up for further evidence on behalf of the plaintiff. At that stage, plaintiff filed the present I.A.Nos.404 and 405 of 2018 in O.S.No.57 of 2011, under Order 18, Rule 17 of CPC, for recalling P.W.1, and under Order 7 Rule 14(3), for permission to file schedule documents. By the impugned common order dated 19.09.2018, the trial court dismissed the applications. Aggrieved by the same, the present revisions are filed.

Learned counsel appearing for the petitioner submits that court below, without appreciating the case of the petitioner and taking an erroneous view of the matter, dismissed the applications seeking to re-call P.W.1 and to receive certain documents, which are crucial to prove the claim of the plaintiff. He submits that the suit is at the stage of adducing evidence on behalf of plaintiff and if the applications filed for recalling and to receive documents, are allowed, no prejudice would be caused to the defendants. Therefore, he seeks to allow the interlocutory applications filed by the petitioner, by setting the impugned common order.

On the other hand, learned counsel appearing for the respondents submit that suit is of the year 2011 and P.W.1 was cross-

examined thrice and the defendants could elicit certain admissions and in order to fill up the lacunae and to negate the admissions made in the cross-examination of P.W.1, petitioner/plaintiff filed the present applications and there are no *bona fides* in the present applications and the court below, rightly observing these circumstances, dismissed the applications and the same may not be interfered with.

In this case it could be seen that the averments made in the affidavit filed in support of the recall petition are vague and the court below, has elaborately dealt with the matter and found that P.W.1 was cross-examined at length and he made certain admissions in the cross-examination, and to fill up the defects and lacunae and to destroy the cross-examination of P.W.1, the present applications are filed.

A Division Bench of this court in the decision reported in *GUDURU NIRMALA v. GUDURASHOK KUMAR*¹, held as under:

“16. In our view, through the provisions of Order 18, Rule 17 CPC have been interpreted to include applications to be filed by the parties for call of witnesses, the main purpose of the said rule is to enable the Court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined. As indicated by the learned Single Judge, the evidence now being sought to be introduced by recalling the witness in question, was available at the time when the affidavit of evidence of the witness was prepared and affirmed. It is not as if certain new facts have been discovered subsequently which were not within the knowledge of the applicant when the affidavit evidence was prepared. In the instant case, Sadanand Shet was shown to have been actively involved in the acquisition of flat in question and, therefore, had knowledge of all the transactions involving such acquisition. 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 18 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

¹ 2014 (3) L.S. 177

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 18 Rule 17 CPC.”

A learned Single Judge of this court in another judgment in *A.RAMA MOHAN REDDY v. A.VIJAYA KUMAR*² held that “*recalling of witness at the instance of the plaintiffs that too, after completion of the evidence of the defendants and when the matter is listed for arguments, to fill-up a gap, being impermissible, the order under Revision, allowing recall of a witness suffers from irregularity.*”

It is to be further seen that the suit is of the year 2011 and the trial commenced in the year 2018 and petitioner had ample opportunity for all these seven years from the date of filing of the suit, to file the documents, even if inadvertently, the documents in question, were not filed along with the plaint. The plaintiff failed to avail the opportunity and only after the cross-examination of P.W.1 was completed, filed the present applications and the court below, on appreciation of material available on record, found that the present applications are filed to fill up the defects and lacunae and to destroy the cross-examination of P.W.1. As per the decisions referred to above, such a course of action is not permissible.

In view of the facts and circumstances of the case, this court is not inclined to interfere with the impugned common order and the revision petitions are devoid of any merits and the same are accordingly dismissed.

² 2018(6) ALT 4

Interlocutory applications pending, if any, shall stand closed.

No costs.

A.RAJASHEKER REDDY,J

DATE:23—11—2018

AVS

