

HON' BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.7399 and 7423 of 2017

COMMON ORDER:

These revisions are filed, impugning the orders of the learned Additional Family Court, City Civil Court, Hyderabad, dated 04.12.2017 in I.A.Nos.1227 and 1226 of 2017 by reopen of PW.1's evidence and recall of PW.1 for further cross examination by respondent to the O.P.No.549 of 2013 filed by the husband for restitution of conjugal rights, which is coming, as stated, for joint trial along with O.P.No.117 of 2014 filed by the wife for divorce.

2. Proof of service filed. No representation for the respondent and taken as heard. Heard the learned counsel for the petitioner. Perused the grounds urged in the revisions and the impugned orders.

3. As held by this Court in the earlier round of revisions dismissing C.R.P.Nos.4140 of 2013 and 4395 of 2016, by common order, dated 01.02.2017, referring to the expression of the Apex Court in Vadiraj Naggappa Vernekar (deceased by L.Rs) v. Sharad Chand Prabhakar Gogate¹, particularly referring to para-16, the provision under Order XVIII Rule 17

¹ AIR 2009 SC 1604

C.P.C. is not meant to fill up the lacunas for the lack of earlier due diligence, if any, to invoke to the prejudice of the other party, but for, only where the Court after evidence of both sides felt any necessity for pronouncement of an effective verdict, recall of any witness to put any questions by the Court and not otherwise, is not in dispute, but for to say, as referred in another expression of this Court in *Badana Mutyalamma and another v. Palli Appala Raju*² by subsequent expression of *K.K.Velusamy v. N.Palanisamy*³ and *Rama Rati v. Mange Ram (died) through L.Rs and others*⁴, that as per Order XVIII Rule 17 C.P.C. it is not the right of the party, but the power of the Court to sub-serve the ends of justice if at all to invoke irrespective of Court can allow even application moved by the party, where it feels to sub serve the ends of justice and any recall of any witness is necessary and not otherwise.

4. No doubt, neither orders of the Court below nor the petition affidavits reflect what is the area of the further cross examination left out, if at all to permit. If at all any questions are given to be put to the witness by way of affidavit, the party being alerted. However, in such course,

² 2017(5) ALT 69

³ 2011(11) SCC 275

⁴ 2016(3) ALD 162 (SC)

the proper recourse to the Court is to ask in a sealed cover what are the relevant questions to be put to the witness, since already cross examined at length. If at all any relevant questions are not put and material for the Court to consider, for not a right of the party under Order XVIII Rule 17 C.P.C. but for, power of the Court to recall any witness to put any questions, where it requires clarity for its effective disposal of the case. Even there from, if at all any party to be allowed to put the questions, instead by the Court, within the discretionary power of the Court. Once such is the case, the blanket allowing by the order of the lower Court is unsustainable and the same is modified to the extent by permitting recall. However, subject to giving of the questions in advance in a sealed cover and permit only those relevant questions if at all while recording the evidence to consider relevancy and admissibility of any questions to be put under Section 136 of the Evidence Act.

5. Accordingly, both the revisions are disposed of.

6. Consequently, miscellaneous petitions, if any shall stand closed. No order as to costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 05.01.2018
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