

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

C.R.P. No.7444 OF 2017

ORDER : (oral)

Vide the present petition, the petitioner has challenged the docket order dated 17.11.2017 passed in I.A.No.698 of 2017 in O.S. No.408 of 2014 by the Senior Civil Judge, Gurajala, Guntur District.

2. The brief facts of the case are that :

The petitioner/plaintiff filed the suit against the respondent for recovery of suit amount of Rs.3,25,065/- on the foot of promissory note executed by the respondent/defendant. On 09.03.2012 the respondent borrowed an amount of Rs.2,00,000/- from the petitioner and executed the suit promissory note in favour of the petitioner. When the respondent failed to pay the suit promissory note debt, the petitioner has filed the aforesaid suit. It is further case of the petitioner that the petitioner filed his chief affidavit and marked respondent's documents on his side. Thereafter, the petitioner's advocate fell ill and he could not attend the Court at the time of cross-examination of the petitioner. At that juncture, the Court asked the petitioner that if he has any further evidence on his behalf, to which, he replied in negative.

3. It is also further case of the petitioner that due to the above said illness, his advocate could not cross-examine the respondent. Later cross-examination of the respondent was

also closed. Thereafter the petitioner's advocate recovered from his illness and filed permission petition to recall DW1 and reopen petition, and the same were allowed. Accordingly, the petitioner's advocate conducted cross-examination of DW1. Immediately after closing the evidence of defence side the petitioner filed a reopen petition and filed another petition to receive the chief affidavit of PW.2. But the Court below dismissed those two I.A Nos.698 of 2017 and 699 of 2017 with a finding that the petitioner is trying to cover up his gaps and he is trying to drive the proceedings.

4. It is not in dispute that a notice was ordered to the respondent who in-turn filed objections in the form of counter taking plea that the above petitions are filed to cover up latches and they are filed with untenable grounds.

5. It is also not in dispute that the issues in the main suit were framed on 08.12.2015 and the petitioner was examined on 28.12.2016. The petitioner himself reported closure of his side evidence on 09.02.2017. Thereafter the respondent examined on 23.03.2017 however the petitioner failed to cross-examine the respondent. As such the right of cross-examination by the petitioner was closed on 30.03.2017. It is only thereafter the main suit was posted for arguments and at that stage the petitioner filed I.A.Nos.631 of 2017 and 632 of 2017 to cross-examine the respondent, which were allowed on 12.07.2017. Thereafter, the

respondent was cross-examined on 18.07.2017 and at that stage the above petitions were brought on record.

6. The learned trial Court observed that reading of sequence of events recorded in the main suit clearly demonstrate that the petitioner is playing delay tactics and resorting to filing of petitions to cover up his draw backs. Accordingly, the trial Court arrived at the opinion that to reopen petitioner's side evidence is devoid of merits and accordingly dismissed.

7. As argued by the learned counsel for the petitioner that due to illness he could not attend the Court for a substantial period. However, there is no medical proof of the same filed before the trial Court or before this Court.

8. In view of the facts recorded above, I find no illegality or perversity in the docket order dated 17.11.2017 passed in I.A.No.698 of 2017 in O.S. No.408 of 2014 by the Senior Civil Judge, Gurajala.

9. Finding no merit in the instant petition and the same is accordingly dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SURESH KUMAR KAIT, J.

Date : 19-01-2018
Gvl

