

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.Nos.382 and 482 of 2019

COMMON ORDER:

These two Revisions arise out of the same proceeding between the same parties. Therefore they are being disposed of by this common order.

2. The petitioner filed O.S.No.1092 of 1998 for recovery of money against respondents, which was decreed on 08-09-2000.

3. Thereafter E.P.No.218 of 2013 was filed for execution of the decree.

4. In the said E.P., E.A.No.48 of 2018 was filed under Section 47 of C.P.C. contending that the decree is not executable against the E.P. schedule property.

5. In that application, the J.Drs. examined P.W.1, who filed affidavit in lieu of chief-examination on 20-04-2018. Thereafter the matter underwent 5 adjournments from 20-04-2018 till 03-07-2015 for cross-examination, but counsel for petitioner/D.Hr. did not cross-examine P.W.1.

6. After noting that the witness is a Senior Citizen and was present on several occasions, the Court below got vexed and closed the cross-examination of P.W.1.

7. Thereafter the matter was posted for petitioner's evidence from 03-07-2018 to 13-07-2018. That was also closed because there was no representation by petitioner or the counsel. So, the matter was posted for arguments. The respondents submitted arguments.

8. Thereafter petitioner filed E.A.No.142 of 2018 to recall P.W.1 for the purpose of cross-examination and E.A.No.143 of 2018 under Order XVIII Rule 17 C.P.C. to reopen the case for the purpose of cross-examination of P.W.1 in E.A.No.48 of 2018.

9. In the affidavits filed in support of these applications, petitioner contended that on 13-07-2018, the case was posted for cross-examination of P.W.1 in E.A.No.48 of 2018, but its counsel could not cross-examine P.W.1 since all of a sudden he had to go out of station and therefore an opportunity be given to cross-examine P.W.1 by reopening the evidence.

10. The respondents opposed the said applications.

11. Both these applications were dismissed by the Court below by order dt.14-08-2018. In the said order, the Court below referred to the fact that 5 opportunities given to the petitioner to cross-examine P.W.1 between 20-04-2018 to 16-07-2018 were not availed of; filing of E.As. is only an abuse of process of law; and no valid reasons were assigned by petitioner to reopen the evidence to cross-examine P.W.1.

12. Assailing the same, these two Revisions are filed.

13. Learned counsel for petitioner contended that petitioner would suffer serious prejudice if petitioner is not allowed to cross-examine P.W.1 in E.A.No.48 of 2018 and though there were lapses on the part of the petitioner in not availing the opportunity to cross-examine P.W.1, the Court may show indulgence to the petitioner and permit the petitioner to cross-examine P.W.1 by reopening the evidence in the matter.

14. From the facts narrated above, it is clear that the chief-examination affidavit of P.W.1 was filed on 20-04-2018 and the matter was adjourned 5 times to enable the petitioner to cross-examine P.W.1 between 20-04-2018 till 03-07-2018, but the counsel for petitioner did not cross-examine P.W.1, though the said witness was a Senior Citizen and had appeared before the Court on each of those dates. So on the date of the 6th adjournment, the Court below closed the evidence of P.W.1.

15. Petitioner or its counsel in the trial Court cannot presume that the Court should allow cross-examination of the witness whenever it is convenient to the counsel to do so. It was their duty to cooperate with the Court and cross-examine the witness, who was a Senior Citizen and a lady and who was present on each of those dates of 6 adjournments. When opportunities given to the petitioner were not availed of by the petitioner, the petitioner cannot take advantage of its own wrong and complain of prejudice.

16. Therefore, I do not find any merit in these Revisions and they are accordingly dismissed. No costs.

17. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 14-03-2019

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