

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.369 of 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.06-12-2018 in I.A.No.468 of 2018 in O.S.No.125 of 2007 of the Senior Civil Judge at Jagtial.

2. Petitioners are defendants in the suit.

3. The 1st respondent filed the said suit against petitioners for declaration of title, recovery of possession and mandatory injunction.

4. After written statement was filed, trial commenced in the year 2016. P.Ws.2 and 3 had filed their chief-examination affidavits and the matter was being posted from time to time, but the learned counsel for petitioners/defendants was not cross-examining them. The matter underwent adjournments from 23-11-2016 to 07-12-2016, from 07-12-2016 to 19-12-2016, from 19-12-2016 to 28-12-2016, from 28-12-2016 to 02-01-2017, from 02-01-2017 to 17-01-2017, from 17-01-2017 to 25-01-2017 and thereafter to 06-02-2017, 28-02-2017, 23-02-2017, 27-03-2017 and 04-04-2017. In all these dates, the witnesses were present, but the learned counsel for petitioners failed to cross-examine the witnesses. In the meantime, the Court below closed the evidence of P.Ws.2 to 4.

5. Thereafter petitioners filed an Interlocutory Application to recall P.Ws.2 to 4 and also to reopen the plaintiffs' side evidence. The

said application was initially returned, but was resubmitted and thereafter was misplaced and could not be traced.

6. Ultimately, I.A.No.468 of 2018 was filed by petitioners on 28-09-2018 to recall P.Ws.2 to 4 alleging that learned counsel for petitioners was suffering from ill-health and not keeping well and was undergoing treatment at Yashoda Hospital at Hyderabad. It was stated that in spite of his ill-health, the said counsel partly cross-examined P.W.2 on 28-02-2017 and sought for further time. The matter was adjourned to 20-03-2017 and on that date, due to Advocates' boycott, it was adjourned to 27-03-2017 and then to 04-04-2017. It is contended that on that day learned counsel for petitioners did not trace out copies of P.Ws.1 and 2 depositions in his file, but the Court closed the evidence of the witnesses.

7. Counter-affidavit was filed by 1st respondent opposing this application. It is contended that copies of the depositions of the witnesses were supplied to the learned counsel for petitioners and that he sought several adjournments on one pretext or the other and successfully dragged on the matter. He also stated that learned counsel for petitioners refused to receive the chief-examination of P.W.1 in open Court adamantly. It is denied that learned counsel for petitioners suffered ill-health or subsequently became incapable of doing work, and it is asserted that the said counsel was appearing before other Courts in same complex. It was also pointed out that the order XVIII Rule 17 C.P.C. has limited scope and the said provision is

not at all attracted to the facts of the case in view of the attempts of petitioners to drag on the matter endlessly.

8. By order dt.06-12-2018, the Court below rejected the said application. It referred to the several dates on which the matter had undergone adjournments upto 04-04-2017, when the learned counsel for petitioners failed to cross-examine the witnesses, who had been present on each of these dates. It also recorded that the learned counsel for petitioners was taking adjournments for one reason or the other and did not cross-examine the witnesses despite giving several opportunities. It opined that when a series of adjournments were being taken by the learned counsel for petitioners, it was the duty of the petitioners to request their counsel to cross-examine the witnesses and the Court would presume that all adjournments were sought by the counsel on the instructions of their parties, and petitioners cannot take the Court for a ride by seeking so many adjournments. It noted that the suit is of the year 2007 and even after 11 years, it is still pending, that petitioners were totally negligent and they are not entitled to seek for recall of P.Ws.2 to 4 for cross-examination since ample opportunity had already been granted to them.

9. Assailing the same, this Revision is filed.

10. Though learned counsel for petitioners sought to contend that illness of the learned counsel for petitioners was the main reason for seeking so many adjournments, the fact remains that 12 adjournments had been granted by the Court below before it closed the evidence of

P.Ws.2 to 4 and these 12 adjournments were between November, 2016 to April, 2017. It is obvious that in spite of several opportunities being given to the counsel for petitioners, probably on the instructions of petitioners, he avoided to cross-examine the witnesses, who were appearing on each and every day.

11. In these circumstances, it cannot be said that the Court should take a liberal view and give more indulgence by giving petitioners another opportunity to cross-examine P.Ws.2 to 4 particularly when the suit is of the year 2007.

12. In these circumstances, I do not find any error of jurisdiction in the order passed by the Court below refusing to recall P.Ws.2 to 4.

13. Therefore I do not find any merit in the Civil Revision Petition and it is accordingly dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 27-02-2019

Vsv