

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition Nos.435 and 466 of 2019

COMMON ORDER :

Heard both sides.

2. Since these two Revisions arise between the same parties out of the same suit, they are therefore being disposed of by this Common order.

3. The petitioner in these Revisions is defendant in O.S.No.265 of 2011 on the file of the XI Additional Chief Judge, City Civil Court, Hyderabad.

4. The said suit was filed by respondent against petitioner for specific performance of contract of sale dt.19.06.2010 alleged to have been executed by petitioner in respect of the suit schedule property in favour of respondent.

5. After issues were framed and trial concluded, the petitioner filed I.A.No.1254 of 2018 to re-open the evidence of PW.1 for the purpose of further cross-examination; and I.A.No.1255 of 2018 to re-call P.W.1 for further cross-examination.

6. In the affidavits filed in both these applications, it is the contention of petitioner that the respondent had examined himself as P.W.1 and marked Exs.A.1 to A.8 on his behalf, that due to certain reasons petitioner had to change his Counsel, and the present Counsel cross-examined PW.1 on 27.09.2018 before the Advocate-

Commissioner, but certain important information could not be supplied to the Counsel during the cross-examination of PW.1 and so the Counsel could not cross-examine PW.1 on those aspects. It is submitted that to elicit certain factual aspects of PW.1, it is necessary to re-call PW.1 and re-open the evidence of plaintiff.

7. Counter-affidavits were filed by respondents opposing these applications. It is contended that after conclusion of the evidence of parties and at a belated stage by way of dilatory tactic, these applications have been filed, and there is no valid reason to permit the petitioner to re-open the evidence of PW.1 and re-call PW.1.

8. By separate orders dt.15.11.2018, the Court below dismissed both the applications. It noted that the counsel for petitioner had filed '*No Objection Vakalat*' on 04.09.2018 and the cross-examination of PW.1 was conducted by the said Advocate on 27.09.2018, and so there was sufficient time for the counsel for petitioner to go through the records to cross-examine PW.1. It also observed that a witness cannot be recalled on a bald statement that a party discovered some relevant and important questions which he could not discuss with his counsel; and relied on the decisions in **Botsa Appala Narasayya vs. Smt. Raghunanda Lakshmi¹**, **Nagumothu Sriharinath vs. Nagumothu Vani²**, and **Allumalla Kannam Naidu vs. Smt. Allumalla Simhachalam³**.

¹ 2004 (1) A.P.L.J. 250 (H.C.)

² 1997 (5) A.L.D. 209

³ AIR 2003 A.P. 239

9. Assailing the same, the present Civil Revision Petitions are filed.

10. The counsel for petitioner contended that grave prejudice would be caused to petitioner if the petitioner is not allowed to re-open the evidence of PW.1 and re-call him for further cross-examination. He also contended that though '*No Objection Vakalat*' was filed on 04.09.2018 by the new Counsel engaged by petitioner, the affidavit in lieu of Chief-examination of PW.1 was supplied to the Counsel only on 17.09.2018, and cross-examination was held on 27.09.2018 and there was no sufficient time for the party to brief the Counsel and ask the Counsel to go through the records and properly cross-examine PW.1.

11. Firstly, there is no plea in the affidavit filed in support of I.A.s that the Chief-examination affidavit of PW.1 was served on the Counsel for the petitioner on 17.09.2018. Secondly, assuming it to be so, since cross-examination was to be conducted on 27.09.2018, i.e., ten days later, there was still sufficient time for the Counsel to obtain proper instructions from the party and cross-examine PW.1

12. In any event, the suit being one of the year 2011, the Court below cannot be expected to liberally construe request for re-opening of evidence and re-call the witnesses at the belated stage when evidence of both sides was closed unless there are strong exceptional circumstances existing to do so.

13. In **K.K. Velusamy vs. N. Palanisamy**⁴, cited by counsel for petitioner, the Supreme Court held that there is no rule that once a case is reserved for judgment, applications thereafter cannot be entertained because there can always be exceptions in exceptional or extraordinary circumstances to meet the ends of justice and to prevent abuse of process of Court warranting reopening of evidence and recalling of witnesses.

14. In that case, though applications were made before the conclusion of the arguments, the Court allowed the applications for recall on the ground that the evidence sought to be produced would assist in clarifying the evidence led on the issues or lead to a just and effective adjudication.

15. In the instant case, there are no exceptional circumstances warranting interference by this Court under Article 227 of the Constitution of India with the impugned orders passed by the Trial Court.

16. Accordingly, the Civil Revision Petitions fail and are dismissed.
No order as to costs.

17. As a sequel, miscellaneous petitions pending if any in these Civil Revision Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 28.03.2019

Ndr/*

⁴ (2011) 11 S.C.C. 275