

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition Nos.515, 518, 536 and 538 of 2019

COMMON ORDER :

Heard both sides.

2. These four Civil Revision Petitions arise between the common parties out of two suits, viz., O.S.No.255 and 269 of 2013, and so, they are being disposed of by this Common Order.

3. O.S.No.255 of 2013 was filed before the Chief Judge, City Civil Court, Hyderabad by respondent in Civil Revision Petition Nos.536 and 538 of 2019 for recovery of possession of the suit schedule property, arrears of rent and loss suffered by respondent due to non-furnishing of Tax Deducted at Source (T.D.S.) Certificates, apart from Service Tax; and also for amount towards Service Tax. Pending suit, the petitioner vacated the suit schedule premises on 31.3.2016 and handed it over to respondent and so the relief of recovery of possession was given up by the respondent.

4. O.S.No.269 of 2013 was filed before the Chief Judge, City Civil Court, Hyderabad by respondents in Civil Revision Petition Nos.515 and 518 of 2019 for recovery of Rs.33,81,000/- towards damages for illegal use and occupation of the suit schedule property therein from June, 2011 to July, 2017 with interest at the rate of 24% per annum from the date of suit till realization.

5. Written statement was filed by the petitioner opposing grant of relief to the respondent/s in the two suits.
6. Issues were framed initially in both suits and later additional issues were framed on 10.7.2018.
7. PW1 was confronted with Chief examination affidavit on 21.8.2018 in both suits, documents were marked and advocate Commissioner was appointed to record the cross-examination / re-examination.
8. Then the matters were posted for cross-examination before the Advocate-Commissioner, and after PW1 was partly cross-examined on 12.10.2018, it was not completed and the Commissioner treated it as 'Nil'. Evidence of plaintiff was closed and the cases were posted for defendant's evidence to 31.10.2018, 12.11.2018 and to 23.11.2018.
9. According to petitioner, on 12.10.2018, its counsel had requested the Advocate-Commissioner to continue cross-examination on the next day, and he also filed a Memo to that effect and also represented the same in the Court, but the Court closed the cross-examination and posted the matter for defendant's evidence. It is contended by counsel for petitioner that it was not possible to conclude the cross-examination on a single day in the two suits, and denial of opportunity to cross-examine PW.1 would cause prejudice to petitioner.

10. In O.S.No.269 of 2013, petitioner then filed I.A.No.6081 of 2018 to re-call P.W.1 by permitting petitioner to cross-examine PW.1, and I.A.No.6082 of 2018 to re-open the cross-examination of PW.1 contending as above.

11. In O.S.No.255 of 2013, petitioner also filed I.A.No.5894 of 2018 to re-call P.W.1 by permitting petitioner to cross-examine PW.1, and I.A.No.5895 of 2018 to re-open the cross-examination of PW.1 contending as above.

12. Counter-affidavits were filed by respondent / plaintiff opposing the said applications and pointing out that the witness is a resident of Mumbai; that the witness did not have any residence of her own at Hyderabad; that petitioner was aware of it; that on 03.10.2018, when the matter was posted before the Advocate-Commissioner for cross-examination of PW.1 and when PW.1 came to Hyderabad on that day, the counsel for petitioner sought adjournment on the ground that he was held up in the High Court and the witness was not subjected to cross examination; as suits were posted on the same day, the court recorded the presence of PW1 and fixed 10.10.2018 as the date for cross examination of PW1; but on that day also the counsel did not turn up, and deputed another counsel to cross-examine the witness with a questionnaire; that the said counsel after putting some questions, then sought for time which was objected to by counsel for respondent, pointing out that the witness had come all the way from Mumbai; that counsel for petitioner then filed a Memo showing as if

he was ready to cross-examine the witness on the next day; and when the counsel for respondent told the petitioner to pay the day costs including flight charges and hotel accommodation, the counsel expressed difficulty, and therefore, the Court closed cross-examination of PW.1. Thus they disputed the claim of the petitioner in the I.As.

13. The respondents/s contended that the applications for re-opening and re-call were not filed on 31.10.2018 itself, that the matter was posted to 12.11.2018 for defendant's evidence and once again adjourned to 23.11.2018 at the request of defendant's counsel / petitioner's counsel; and since they were filed on 23.11.2018 all the applications were liable to be dismissed.

14. By two separate common orders dt.31.12.2018, the Court below allowed both the applications subject to the condition that petitioner / defendant should pay the travel and accommodation expenses of PW.1, and only then it will be permitted to cross-examine the witness; and directed the matter to be posted before the Commissioner on 21.01.2019. It observed that petitioner kept quiet for about 1 ½ month and came up with these applications; and therefore, he must be made to pay the above expenses.

15. Assailing the same, Civil Revision Petition Nos.515, 518, 536 and 538 of 2019 were filed.

16. The counsel for petitioner contended that though the orders were passed in these applications by the Court below on 31.12.2018, copies of the same were made available on 22.01.2019, and they were delivered on 25.01.2019 and so petitioner was disabled from challenging the said orders; and in the meantime, the Court had proceeded further in the matter and recorded the evidence of petitioner. He further contended that it is not possible to cross-examine the witness on a single day in both suits and that the Court below therefore erred in imposing the condition that petitioner should pay travel and accommodation expenses of the witness, while permitting the petitioner to further cross-examine PW.1 by recalling the said witness.

17. The counsel for respondent supported the order passed by the Court below, and in fact, contended that now that the petitioner's evidence is also completed, if the petitioner is now allowed to cross-examine PW.1, it would amount to permitting the petitioner to fill up the lacunae in his evidence.

18. I do not see how permitting the petitioner to cross-examine PW.1 further would result in allowing the petitioner to fill up the lacunae in its evidence and so I reject the said objection.

19. The further objection of the counsel for respondents/s that the Civil Revisions Petitions were belatedly filed also cannot be ground to reject them, because the petitioner could not have challenged the impugned orders in the I.A.s before 21.01.2019 on account of

Sankranti vacation of the Courts, and serious prejudice would have been caused to petitioner if he did not have opportunity to cross examine PW1.

20. I also reject the contention of the counsel for petitioner that the Court below was not justified in imposing the condition on the petitioner paying travel and accommodation expenses of PW.1, because PW.1 was not cross examined on 3.10.2018 and only partly cross examined on 10.10.2018. As the witness was not a resident of Hyderabad, and if she had to come again to Hyderabad to give evidence, it should be at the cost of petitioner.

21. Though the counsel for respondent seriously objected to giving of an opportunity to petitioner to cross-examine the said witness again in the light of the earlier conduct of petitioner and his counsel, I feel that interests of justice would be served by allowing the petitioner to further cross-examine PW.1 subject to the certain conditions.

22. Therefore the Civil Revision Petitions are disposed of by modifying the orders dt.31.12.2018 in I.A.Nos.6081 and 6082 of 2018 in O.S.No.269 of 2018 and in I.A.Nos.5894 of 2018 and 5895 of 2018 in O.S.No.255 of 2013 of the Chief Judge, City Civil Court, Hyderabad as under:

- (i) the cross-examination of PW.1 should be completed on two (02) consecutive days by the counsel for petitioner without seeking any extension of time;

(ii) petitioner shall pay the travel expenses for PW.1 to come from Mumbai to Hyderabad and to go from Hyderabad to Mumbai only once, though accommodation expenses for the two (02) consecutive days of stay of PW.1 at Hyderabad shall be paid in advance;

(iii) within one (01) week from the date of receipt of copy of this order, the counsel for respondent shall inform the amount payable to counsel for petitioner; and

(iv) the petitioner shall pay travel and accommodation expenses of PW.1 within ten (10) days from to-day;

(v) after the costs are paid within the time above mentioned, the witness PW.1 shall appear before the Court below in the following week on a date agreed by the counsel for petitioner as well as counsel for respondent the cross examination of PW1 shall be recorded by the Court below.

23. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Note : Issue C.C. in three (03) days.

B/o.

Date: 25.06.2019

Ndr/*