

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

CRP. No.1292 of 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.15.04.2019 passed in I.A. No.379 of 2019 in O.S. No.510 of 2008 by the II Additional Junior Civil Judge, Warangal.

2. The petitioners herein are the plaintiffs 9 and 10 in the suit.
3. During the course of trial, after the chief examination affidavit of DW.1 was filed on 11.04.2018 and subsequent thereto documents were marked on 17.09.2018 through DW.1. The said witness was cross-examined at length by the plaintiffs' counsel on 29.01.2019, 19.02.2019 and 21.02.2019 and later it was adjourned for further evidence of the defendants. Later, the counsel for the defendants reported no evidence and the matter was posted for arguments on 12.03.2019 and subsequently to 15.03.2019. On that day, plaintiffs filed I.A. No.379 of 2019 to recall DW.1 for further cross-examination alleging that some important questions pertaining to Exs.B-1 to B-8, B-30 and B-31 and B-9 to B-13 and A-43 to A-45 were not put to the witness and to permit them to cross-examine DW.1 so that he can be confronted the said documents.
4. This application was opposed by the 1st respondent who contended that the suit is an old suit and the attitude of the plaintiffs is only to protract the matter and they had adopted a casual approach.

5. By order dt.15.04.2019 the Court below dismissed the said application. It observed that DW.1 had been cross-examined on three days by the counsel for the plaintiffs and no reason is assigned why the questions on the above documents were not put to DW.1. It also observed that if such pleas are entertained, no case would be completed and the parties would keep on recalling the witnesses and the object of justice at earliest, would be defeated. It observed that the object of the power under Order XVIII Rule 17 CPC is to recall any witness for examination for the purpose of obtaining clarifications and such power cannot be stretched any further. The said power cannot be invoked to fill up omissions in the evidence already led by a witness or to fill up lacuna in the evidence. It relied on the decision of the Supreme Court in **Velusamy Vs. N.Palanisamy**¹ wherein the Supreme Court observed that Order XVIII Rule 17 is to clarify any issue or doubt by recalling any witness either *suo motu* or at the request of the any party so that the Court itself can put questions and elicit answers. Similar view has been expressed in **Ram Rati Vs. Mange Ram (dead) through Legal Representatives and others**² as under:

“The respondent filed the application under Rule 17 read with Section 151 CPC invoking the inherent powers of the court to make orders for the ends of justice or to prevent abuse of the process of the court. The basic purpose of Rule 17 is to enable the court to clarify any position

¹ (2011) 11 SCC 275

² (2016) 11 Supreme Court Cases 296

or doubt, and the court may, either suo motu or on the request of any party, recall any witness at any stage in that regard. This power can be exercised at any stage of the suit. No doubt, once the court recalls the witness for the purpose of any such clarification, the court may permit the parties to assist the court by examining the witness for the purpose of clarification required or permitted by the court. The power under Rule 17 cannot be stretched any further. The said power cannot be invoked to fill up omission in the evidence already led by a witness. It cannot also be used for the purpose of filling up a lacuna in the evidence. “No prejudice is caused to either party” is also not a permissible ground to invoke Rule 17. No doubt, it is a discretionary power of the court but to be used only sparingly, and in case, the court decides to invoke the provision, it should also see that the trial is not unnecessarily protracted on that ground.”

6. Having regard to the above settled legal position, I am of the view that the petitioners ought to have put all the questions, which they wanted to put to DW.1 when they cross-examined the said witness on 29.01.2019, 19.02.2019 and 21.02.2019. They cannot be again permitted to recall DW.1 for further cross-examination.

7. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

8. Accordingly, this Revision fails and is dismissed. There shall be no order as to costs.

9. As a sequel, miscellaneous applications, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 25.06.2019
LSK

