

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP. No.1457 of 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.17.05.2019 passed in I.A. No.909 of 2019 in FCOP.No.1247 of 2015 of the Family Court, Ranga Reddy District at L.B.Nagar, Hyderabad, refusing to recall P.W.1 for the purpose of further cross-examination by the petitioner.

2. The said O.P. was filed by the respondent against the petitioner for dissolution of their marriage which took place on 26.04.2012 on the ground of cruelty and desertion etc.

3. Counter was filed by the petitioner opposing the grant of the said relief to the respondent.

4. After the issues were framed, trial commenced and respondent/P.W.1 filed affidavit *in lieu* of the chief examination on 21.08.2018. On 22.01.2019 he marked Exs.A1 to A16. The petitioner cross-examined him on 19.03.2019, 26.03.2019, 02.04.2019 and 22.04.2019 elaborately and the cross-examination runs into about six pages.

5. On 02.05.2019 petitioner filed I.A. No.909 of 2019 to recall P.W.1 for the purpose of further cross-examination by her invoking Order XVIII Rule 17 CPC. In the affidavit filed support of the application she stated that she wants to cross-examine P.W.1 and put some more important questions but due to lack of time, she was unable to question him and the Family Court had closed her evidence and posted it for further evidence. She stated that

she wants to cross-examine P.W.1 to prove her contention of cruelty and harassment meted out to her during the marriage.

6. Counter was filed by the respondent to the said application stating that no grounds were made out to recall P.W.1 to conduct further cross-examination, and that the reasons to recall P.W.1 are not proper and are vague. It was specifically mentioned that cross-examination of P.W.1 was done on four different dates as mentioned above, that the petitioner had sufficient time to do so at length, and this application was filed only to delay the proceedings to harass him.

7. By order dt.17.05.2019 the Court below dismissed the said application. It held that cross-examination of P.W.1 had been done on four separate occasions by herself as party-in-person, and there are no valid reasons to recall P.W.1 for further cross-examination because he was already subjected to detailed cross-examination.

8. Assailing the same, this Revision is filed.

9. Though notice sent to the respondent was served there is no representation for the respondent.

10. Heard the party-in-person. She reiterated that she wanted to put some more important questions to respondent during cross-examination and for the said purpose respondent ought to be recalled and subjected to further cross-examination by her.

11. Order XVIII Rule 17 CPC states that the Court may, at any stage of suit, recall any witness who has been examined, and may put such questions to him as the Court thinks fit subject to the law of evidence for the time being in force.

12. The said provision has been interpreted by the Supreme Court in **Vadiraj Naggappa Vernekar (deceased by L.Rs.) Vs. Sharad Chand Prabhakar Gogate**¹ to the effect that the purpose of the rule is to enable the Court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined. It observed that only to clear any ambiguity that may be arising during the course of cross-examination, such power can be invoked but otherwise it is to be sparingly exercised. It observed that merely on the ground that his recall and re-examination would not cause any prejudice to the parties, such power cannot be exercised.

13. In view of the said legal settled position and since the petitioner had already cross-examined P.W.1 on four separate occasions on 19.03.2019, 26.03.2019, 02.04.2019 and 22.04.2019 very elaborately running into six pages, another opportunity to the petitioner cannot be granted invoking Order XVIII Rule 17 CPC. I therefore, 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.

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

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 30.07.2019
LSK

¹ AIR 2009 Supreme Court 1604



