

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition Nos.1648 and 1654 of 2019

COMMON ORDER :

Heard both sides.

2. Since these two Revisions arise out of the same suit between the same parties, they are being disposed of by this Common Order.
3. These Civil Revision Petitions are filed under Article 227 of the Constitution of India challenging separate orders dt.01.07.2019 passed in Interlocutory Application No.108 of 2019 and Interlocutory Application No.109 of 2019 in Original Suit No.1009 of 2012 on the file of the Special Sessions Judge for Trial of Cases under Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act – cum – VII Additional District and Sessions Judge, Ranga Reddy District, at Lal Bahadur Nagar, Hyderabad.
4. The petitioners herein are defendant nos.1 to 3 in the above suit.
5. The respondent filed the said suit against petitioners for recovery of money.
6. The respondent produced evidence and examined PW.1 initially, and later he examined P.W.2.
7. When the respondent wanted to summon P.W.2 by filing Interlocutory Application No.444 of 2016, the said I.A. was dismissed

on 31.01.2017. Therefore, the respondent filed Civil Revision Petition No.1840 of 2017 which was allowed on 13.06.2018, and PW.2 was examined on 13.08.2018.

8. But, the petitioners did not cross-examine P.W.2.

9. Thereafter, evidence was closed and the matter was posted for arguments, and written arguments were filed on behalf of respondent on 20.11.2018.

10. Subsequently, the matter was getting adjourned for arguments to be addressed by petitioners, but they did not turn up; and the matter was adjourned to 01.03.2019.

11. On 11.03.2019, the petitioners filed Interlocutory Application No.108 of 2019 to enable petitioners to cross-examine PW.2 and also to adduce their evidence; and Interlocutory Application No.109 of 2019 under Order XVIII Rule 17 of Civil Procedure Code, 1908 to recall PW.2 for the said purpose.

12. In the affidavit filed in support of these applications, it is contended that though petitioners had received summons in the suit and engaged counsel on their behalf to defend them, during the pendency of the suit, there arose disputes between 3rd petitioner and counsel engaged by the parties, and a criminal case under Section 138 of the Negotiable Instruments Act, 1881 was instituted by the counsel against 3rd petitioner; and later, the said counsel did not evince any interest in prosecuting the case. It is contended by other petitioners

that they tried to convince the counsel not to victimize them on account of his dispute with 3rd petitioner, and continue to prosecute the case on their behalf; that they followed-up the case through the Junior of the counsel for some time; that till February, 2019, petitioners were under the impression that the counsel was following up the case, but when they came to know that P.W.2 was examined and the case was coming up for arguments they approached the counsel and requested him to continue the case, but he did not do so. They contended that they then engaged another counsel who entered appearance on 01.03.2019, and thereafter, filed these two Interlocutory Applications.

13. Counter-affidavit was filed by respondent opposing these applications and contending that the suit is of the year 2012; that petitioners were aware of filing of suit as they received summons; that the allegations made in the two affidavits are concocted for the purpose of the said applications; that in Civil Revision Petition No.1840 of 2017, the petitioners had engaged an Advocate in the High Court and the said Civil Revision Petition No.1840 of 2017 was allowed on 13.06.2018; and thus the petitioners had knowledge about the pendency of the suit, and yet they did not cross-examine PW.2. They contended that because of lack of diligence on the part of petitioners, no indulgence shall be shown to them.

14. By separate orders dt.01.07.2019, the Court below dismissed both the applications. It held that the suit is of the year 2012; that

petitioners were aware of proceedings in the suit and also about the evidence of PW.2, because they had contested the Civil Revision Petition No.1840 of 2017 also in the High Court; and yet, they did not cross-examine PW.2. It also held that 2nd petitioner filed an affidavit on behalf of petitioners, but she was not the person who was prosecuting the case on behalf of petitioners.

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

16. The counsel for petitioners contended that petitioners were unable to cross-examine PW.2 on account of the dispute between 3rd petitioner and the Advocate engaged by petitioners, and that they ought to be given an opportunity to cross-examine PW.2.

17. The fact remains that the dispute between 3rd petitioner and the Advocate engaged by petitioners started in January, 2017. When the said counsel was not evincing any interest in looking after the affairs in the suit on behalf of petitioners, nothing prevented the petitioners from engaging another counsel and proceeding further in the matter by obtaining 'No Objection *Vakalat*' from the said Counsel. Instead they kept quiet. They were aware of the suit being pending because they contested Civil Revision Petition No.1840 of 2017 by engaging a different counsel in the High Court, and knew that the said Civil Revision Petition was allowed on 13.06.2018, and PW.2 would be examined thereafter.

18. PW.2 was examined only on 13.08.2018, and petitioners ought to have taken steps to cross-examine PW.2 by engaging a different counsel. But, they were negligent in doing so. The respondent had already filed his written arguments on 20.11.2018, and the matter has been coming up for submission of arguments by the petitioner, and only in March, 2019, the instant applications were filed.

19. No explanation is furnished by petitioners why they kept quiet after the Civil Revision Petition No.1840 of 2017 was allowed on 13.06.2018 till March, 2019, and why they did not cross-examine PW.3 in the mean time when they had opportunity to do so.

20. In the circumstances, 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.

21. Accordingly, the Civil Revision Petitions fails and are dismissed. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 17.07.2019

Ndr/*