

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.6097 of 2018

ORDER:

This Revision is filed assailing the order dt.17-09-2018 in I.A.No.462 of 2018 in O.S.No.655 of 2009 of the II Additional Senior Civil Judge, Warangal.

2. Petitioner is plaintiff in the said suit. He filed the suit for recovery of money against 1st respondent.

3. Petitioner filed affidavit in lieu of chief-examination on 01-03-2016, but did not undergo cross-examination for 7 consecutive adjournments. So, the Court below closed his evidence on 09-01-2018 and posted the matter for further evidence of petitioner.

4. Thereafter petitioner filed I.A.No.123 of 2018 under Order XVIII Rule 17 C.P.C., which was dismissed on 05-06-2018.

5. So he filed I.A.No.462 of 2018 under Section 151 C.P.C. to restore the affidavit of examination in chief of P.W.1 by setting aside the docket order dt.09-01-2018. It is contended in the said application that if the said I.A. is not allowed, grave and irreparable loss would be caused to the petitioner.

6. By order dt.17-09-2018, the Court below dismissed the said application stating that petitioner had earlier filed petition under Order XVIII Rule 17 C.P.C. i.e. I.A.No.123 of 2018, which was dismissed on

05-06-2018, and on 25-06-2018 I.A.No.462 of 2018 is filed for the above relief. It held that after the chief-examination affidavit was filed on 01-03-2016, the matter was posted for cross-examination 14-12-2016 and thereafter for seven more adjournments P.W.1 did not submit himself for cross-examination; there was no representation from P.W.1 on 09-01-2018, and that was the reason why the evidence of P.W.1 was closed and the matter was posted for further evidence of P.W.1. The Court below held that Order XVIII Rule 17 or Section 151 C.P.C. cannot be invoked routinely merely for asking and that the Court has discretion to refuse the relief under the said provisions, if it is of the opinion that only for protracting the proceedings, it is being resorted to. It also held that the suit was of the year 2009 and as per the directions of the Supreme Court, old matters should be disposed as early as possible.

7. Challenging the same, this Revision is filed.

8. Learned counsel for petitioner reiterated the stand taken in the Court below that grave prejudice would be caused to the petitioner if I.A.No.462 of 2018 is not allowed. He also placed reliance on the order dt.24-10-2017 in I.A.No.57 of 2017 in O.S.No.655 of 2017 filed by respondents to demark/de-exhibit Ex.A-1 dt.04-06-2008, which was dismissed and stated that due to pendency of that application, the petitioner could not approach the Court earlier for relief.

9. Merely because respondents filed an application to demark/de-exhibit a document, petitioner cannot take advantage of it and refuse to submit himself for cross-examination, that too for 7 adjournments. Petitioner's attitude appears to be that whenever he feels it convenient, he would come before the Court to give evidence and the Court should be ready to take his evidence at that point of time. Such an attitude of the petitioner cannot be countenanced.

10. I therefore see no reason to interfere with the order passed by the Court below.

11. Therefore, I see no merit in the Civil Revision Petition and it is accordingly dismissed at the stage of admission. No costs.

12. Consequently, miscellaneous petitions pending, if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

Date : 28-12-2018
Vsv