

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.7479 of 2018

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.04-12-2018 in I.A.No.902 of 2018 in O.S.No.19 of 2009 of the VIII Additional District Judge at Nizamabad.

2. Petitioner herein is 4th defendant in the suit.
3. The said suit was filed for declaration of title and perpetual injunction against petitioner and other defendants by 1st respondent.
4. After trial commenced and chief-examination of P.W.5 was concluded, the matter was posted for cross-examination of P.W.5 on 07-09-2018. On that day, counsel for petitioner and other defendants sought a pass over and did not represent the matter entire day. Since the witness was a 85 years old man, who was waiting from 10.30 a.m; and because there was no representation on behalf of petitioner and other defendants, the Court below closed the cross-examination of P.W.5.
5. One month later, petitioner filed I.A.No.902 of 2018 stating that he could not contact his Advocate and he was not aware of the date of posting of the case as 07-09-2018; that on that day, his counsel had attended and appeared and got the matter passed over; and thereafter

the mater was called, absence was recorded and the Court closed the cross-examination. He also gave explanation for delay in filing I.A.No.902 of 2018.

6. Counter-affidavit was filed by 1st respondent opposing the said application stating that on 07-09-2018, five times the matter was called, but the Advocate for petitioner and other defendants did not turn up and the Court had rightly concluded the cross-examination of P.W.5 and closed it.

7. By order dt.04-12-2018, the Court below dismissed I.A.No.902 of 2018. It noted that on 07-09-2018, the matter was called five times between 10.30 a.m. till 5 p.m., but the counsel for petitioner did not turn up and since witness was aged 85 years and had waited in the Court hall from 10.30 a.m. onwards, the Court had closed the cross-examination. It rejected the plea of the petitioner that his counsel had represented before the Court and got the matter passed over, and observed that if it were to be true, counsel for petitioner should have appeared before the Court when the matter was called after lunch, but he never turned up. It also commented on the delay in filing the application to reopen the evidence of P.W.5 for cross-examination by the petitioner.

8. Assailing the same, this Revision is filed.

9. Learned counsel for petitioner contended that no doubt there was failure on the part of the counsel for petitioner to cross-examine

P.W.5, but the party should not be made to suffer for the conduct of the Advocate, and the petitioner is willing to pay costs to the witness, if given an opportunity to cross-examine the said witness again.

10. Though learned counsel for 1st respondent had opposed the same, I agree with the contention of the learned counsel for petitioner that for the fault of Advocate in not cross-examining P.W.5 on 07-09-2018, petitioner cannot be penalized.

11. In view of delay on the part of petitioner in filing I.A.No.902 of 2018, it is desirable to impose costs of Rs.5,000/- on the petitioner to be paid to P.W.5.

12. Therefore, the Civil Revision Petition is allowed; the order dt.04-12-2018 in I.A.No.902 of 2018 in I.A.No.19 of 2009 of the VIII Additional District Judge at Nizamabad is set aside; and the said I.A. is allowed subject to petitioner paying to the petitioner within two weeks from today, the costs of Rs.5,000/-; and within one week of such payment of costs and reporting to the Court below, the Court below shall fix the date for cross-examination of P.W.5 by petitioner and other defendants, and on that day, P.W.5 shall appear and subject himself for cross-examination. No costs.

13. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 05-08-2019

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