

Thereafter on three successive dates i.e. 20.10.2017, 23.11.2017 and 07.12.2017, the cross-examination of PW-3 Roshan was not conducted by learned counsel for the defendant/petitioner. An application was filed under Order 18 Rule 3 CPC and the same was dismissed on 15.03.2018. The cross-examination of PW-3 was again deferred on 19.07.2018 and the same was completed only on 04.08.2018.

[3]. On 16.08.2018, Draftsman namely Rajender Kumar Saini was present in Court along with map and copy was supplied to the defendant. Learned counsel for the defendant asked for list of witnesses. On the said premise, no evidence was led. On 16.08.2018, list of three witnesses and index were presented in Court and the case was adjourned for 24.09.2018 for the evidence of the plaintiff. On the adjourned date, R.K. Saini, Kamal Saini and Record Keeper of MC Narnaul were present in Court, but were not examined by learned counsel for the defendant. Defendant raised allegations that list of witnesses and map were secretly placed on record.

[4]. The presence of the aforesaid three witnesses and map of the suit property were considered by the Court on the basis of objections raised by learned counsel for the defendant that without notice learned counsel for the defendant will not examine any witness and the map tendered in evidence was

nothing, but an effort to fill up lacuna in the case of the plaintiff at the time of leading of evidence. Learned counsel for the defendant refused to cross-examine the witnesses of the plaintiff, who were present in Court.

[5]. The trial Court in its discretion allowed the plaintiff to tender list of witnesses and map on the next date, when learned counsel for the defendant insisted that without notice, the defendant will not cross-examine any witness. The trial Court recorded a finding that the plaintiff has not committed any fraud with the Court and the list of witnesses and the map were in the knowledge of the Court. The trial Court further opined that the defendant cannot insist the Court to proceed against the plaintiff for any act of fraud or cheating, particularly when the list of witnesses and the map were already in the knowledge of the Court. Learned counsel for the defendant was asked to co-operate with the Court and examine the witnesses present on behalf of the plaintiff.

[6]. It has also been observed by the trial Court in the impugned order that learned counsel for the defendant used to come at 4.00 p.m. and then would say that the time was not sufficient to examine the witnesses present in Court. Vide the impugned order, the trial Court directed both the parties to be present in Court on the adjourned date for cross-examination of

plaintiff witnesses. This is so because the case was in the action plan of the year 2018-19.

[7]. Learned counsel for the petitioner vehemently submitted that in terms of Order 7 Rule 14(3) CPC, the documents relied by the plaintiff must be filed along with the plaint. Production of documents at a subsequent stage cannot be permitted in the manner as suggested on record. The discretion exercised by the Court for permitting the plaintiff to file the documents should be exercised on sound legal principles and the leave of the Court has to be granted by way of reasoned order. Learned counsel relied upon **Nyayapathi Srinivas Raghavan vs. Burra Adinarayana Sastry, 2012(22) R.C.R. (Civil) 774 (A.P.)** and **G. Sanjeeva Reddy & Ors. vs. Indukuru Lakshamma & Ors., 2007(1) Civil Court Cases 286 (A.P.)** in support of his contention.

[8]. I have considered the submissions made by learned counsel for the parties and have also perused the material on record.

[9]. Perusal of the material on record would show that there is a suit pending between the parties, wherein ejection of the defendant/petitioner is sought by the respondent/landlord. In such type of litigation, the conduct of the defendant/tenant is

always to delay the proceedings for one reason or the other. The trial Court has noticed the incriminating facts by observing that the delay was attributable to the conduct of the defendant. On 16.08.2018, three witnesses namely R.K. Saini, Kamal Saini and Record Keeper of MC Narnaul were present. List of witnesses and map were already in the knowledge of the Court and the trial Court has endorsed the said fact in the order itself that the plaintiff has not committed any fraud with the Court.

[10]. Even under Order 18 Rule 17 CPC, the Court may at any stage of the suit recall any witness, who has been examined and may put some questions to him as the Court thinks fit. In the instant case, even three witnesses were to be examined by the defendant. Once the Court has endorsed that the list of three witnesses and the map were already in the knowledge of the Court and the Court in its discretion allowed the plaintiff to file the list of witnesses and map, it does not lie in the mouth of the defendant to object to the same as in the considered opinion of the trial Court, the witnesses and the map were relevant material to be considered for the purpose of deciding the case in an appropriate manner.

[11]. Recording of incriminating facts on record leading to the conduct of the defendant would not give rise to the exercise

of discretion in favour of the defendant/petitioner. The leave of the Court once granted for the production of list of witnesses and map cannot be withdrawn on the grounds as suggested by learned counsel for the petitioner, particularly when the Court has found that no fraud has been committed by the plaintiff with the Court and the list of witnesses and the map were already in the knowledge of the Court and the Court by its discretion allowed the plaintiff to proceed further on the basis of list of witnesses and map produced on record.

[12]. The provision is handmaid of justice. On acquiring knowledge about the list of witnesses and map, learned counsel for the defendant was supposed to proceed further, but he flatly refused to cross-examine the witnesses. The observations of the trial Court in the context of non-cooperation by the defendant further goes to show that the defendant has exhibited a conduct which is not conducive to the justice delivery system.

[13]. On overall assessment of facts on record, I deem it appropriate to maintain the impugned order. This revision petition is found to be totally bereft of merits and is accordingly dismissed.

September 17, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No