

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NOs.921 AND 922 OF 2020

COMMON ORDER:

These Revisions arise out of the same suit between the same parties and so they are being disposed of by this common order.

2. The petitioners in both these Revisions are defendants in O.S.No.1922 of 2018 on the file of VIII Junior Civil Judge, City Civil Court, Hyderabad.

3. The respondents herein filed the said suit against the petitioners for recovery of possession of the suit schedule property and for future mesne profits @ Rs.50,000/- per month to be paid to the respondents with future interest @ 24% per annum from the date of the suit till the date of handing over of vacant possession of the suit schedule property to the respondents.

4. Written statement was filed by the petitioners opposing the grant of relief to the respondents.

5. After the evidence of the respondents/plaintiffs was concluded, the suit was coming up for the evidence of the petitioners/defendants. D.W.1 was examined and the suit was coming up for further evidence of the defendants.

6. On 07.02.2020, further evidence of the petitioners/defendants was closed.

7. According to the petitioners, this happened just prior to the Junior Counsel appearing for the petitioners coming into the Court hall and the Junior Counsel immediately made representation to grant time to lead further evidence, but the Court did not grant such time and posted the suit for arguments.

8. The petitioners on 18.02.2020 therefore filed I.A.No.128 of 2020 to reopen the evidence of the defendants and I.A.No.134 of 2020 to receive certain photographs with CD into the suit.

9. *Counsel for the respondents stated that he had no objection if both the Applications are allowed.*

The orders of the Court below

10. But the Court below by separate orders dt.05.08.2020 dismissed both the Applications.

11. In I.A.No.128 of 2020, the Court below held that the Application I.A.No.128 of 2020 had been filed by the petitioners invoking Section 151 of CPC, but Order XVIII Rule 17 of CPC enables the Court to recall any witness to enable the Court to put questions or to elicit any clarifications and Section 151 of CPC cannot be routinely invoked for reopening of evidence and recalling of witness.

It also referred to the deletion of Order XVIII Rule 17A of CPC which permitted production of evidence not previously known or the evidence which could not be produced despite due diligence, and stated

that it was deleted because of misuse thereof by parties to prolong the proceedings under the pretext of discovery of new evidence.

Then it went on to say that immediately after completion of the evidence, the trial Court heard the arguments and proceeded to deliver judgment and it is unnecessary to have express provision to reopen the evidence for examining fresh witness or recall any witness for further evidence.

It also referred to the contention of the Counsel for the respondents/plaintiffs that once arguments are advanced, there cannot be any reopening of evidence or recalling of any witness, but rejected the said contention and held that there is no such absolute rule or a straitjacket formula and there would always be exceptions in exceptional or extraordinary circumstances to meet the ends of justice and to prevent abuse of process of Court.

Yet it ultimately dismissed I.A.No.128 of 2020 on the ground that the petitioners did not plead in the affidavit as to why they failed to represent the matter, and that the documents which the petitioners now seek to bring on record such as photographs and CD would not be helpful for the Court to decide the *lis* involved in the suit.

12. While dismissing I.A.No.134 of 2020, the Court below referred to Order VIII Rule 1A (3) of CPC and observed that in the Application, the petitioners stated that they recently traced out the documents, but in the

written statement filed, they did not state anywhere about these documents which are being produced now.

The consideration by the Court

13. Assailing the same, these two Revisions are filed.

14. Heard Sri V. Venkata Mayur, learned counsel for the petitioners and Sri Pramod Singh, learned counsel for Sri Vinod Singh, learned counsel for the respondents.

15. It is important to note that even according to the facts narrated by the Court below in its order in I.A.No.128 of 2020, D.W.1 was cross-examined on 03.02.2020 and the suit was posted to 07.02.2020 for further evidence of the petitioners, but due to the absence of the petitioners and their counsel, their evidence was closed and the suit was posted to 17.02.2020 for arguments.

16. I.A.No.128 of 2020 had been filed on 18.02.2020 within 15 days from 07.02.2020 pleading that the Junior Counsel of the petitioners wanted to request for leading of further evidence on behalf of the petitioners, but before he came into the Court hall, the matter was called and the evidence was closed and his request to grant time made on the same day for leading further evidence for the petitioners was rejected.

17. In my opinion, between 07.02.2020 (the day when the evidence of the petitioner was closed) and 18.02.2020 (the day when the IAs were filed), it cannot be said that there was any undue delay on the part of the

petitioners in filing I.A.No.128 of 2020 to reopen the evidence of the petitioners and to enable them to lead further evidence.

18. That apart, to both Applications I.A.No.128 of 2020 and I.A.No.134 of 2020, admittedly the respondents said that they have no objection and the Court had recorded the same in the impugned orders.

19. When the respondents in these Revisions had no objection if the Court had allowed I.A.No.128 of 2020 and I.A.No.134 of 2020, I fail to understand why the Court below should dismiss these Applications taking a hyper technical view of the matter.

20. I also find it unusual that the Court below could not accept the request of the Junior Counsel of the petitioners made on 07.02.2020 to permit the petitioners to lead further evidence immediately after the Court had passed the order on 07.02.2020 closing their evidence. The reasoning of the Court below that the petitioners should have pleaded as to why they failed to represent the matter, is perverse because once the petitioners had engaged a counsel, they would rely on the counsel to make representation in the Court and if the Counsel could not be present for some reason, the petitioners cannot be made to suffer and their evidence cannot be closed in the manner in which the Court below had done.

21. Even with regard to I.A.No.134 of 2020, when the respondents/plaintiffs have stated that they have no objection for it to be allowed, the Court below ought not to have rejected the same taking a

hyper technical view of the matter quoting Order VIII Rule 1A (3) of CPC. It ought to have received the material which the petitioners are seeking to file, and then consider about its relevancy and admissibility; but at the stage of receiving the documents, it could not have expressed any view about the said material which it has done in para 10 of the order passed by it in I.A.No.128 of 2020 (i.e, that they are not helpful to the Court to decide the *lis* involved in the suit).

22. Therefore, both the Revisions are allowed; Orders dated 05.08.2020 in I.A.No.128 of 2020 and I.A.No.134 of 2020 in O.S.No.1922 of 2018 on the file of the VII Junior Civil Judge, FAC VIII Junior Civil Judge, City Civil Court, Hyderabad are set aside; and the said I.A.s are allowed. The Court below shall fix a date for adducing further evidence on the part of the petitioners and also receive the documents/material sought to be filed by the petitioners after reopening the suit, and give opportunity to the petitioners to lead further evidence and then decide the suit in accordance with law.

23. Pending miscellaneous petitions, if any, in these CRPs shall also stand closed. No costs.

M.S.RAMACHANDRA RAO, J

Date: 09-09-2020

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