

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION Nos.2646 AND 2647 OF 2019

COMMON ORDER:

Since the parties and the subject suit in both these civil revision petitions are one and the same, they are being heard and disposed of together.

2. These Civil Revision Petitions, under Article 227 of the Constitution of India, are filed by the petitioner/defendant, aggrieved by the orders, dated 29.10.2019, passed in I.A.Nos.337 and 336 of 2019 in O.S.No.128 of 2017 by the learned XIX Additional Senior Civil Judge, City Civil Court at Secunderabad, whereby, the subject Interlocutory Applications filed by the revision petitioner/defendant, to reopen the case and to recall P.W.1 for cross-examination, were dismissed.

3. Heard the learned counsel for both sides and perused the record.

4. Learned counsel for the revision petitioner/defendant would submit that P.W.1 was not cross-examined at all. In spite of instructions, the earlier counsel, who appeared for the revision petitioner/defendant before the Court below did not cross-examine P.W.1 on 14.08.2019. The revision petitioner/defendant having come to know the same, took no objection from the earlier counsel and filed Interlocutory Applications to reopen and to recall P.W.1 for cross-examination. There are no wilful laches on the part of the revision petitioner/defendant in filing the subject Interlocutory Applications. The Court below ought to have allowed the subject Interlocutory

Applications and ultimately prayed to set aside the impugned orders and allow the civil revision petitions as prayed for.

5. On the other hand, learned counsel for the respondent/plaintiff would contend that several opportunities were given to the petitioner/defendant when I.A.No.202 of 2019 and I.A.No.203 of 2019 were filed to reopen and to recall P.W.1 for cross-examination and the same were allowed on 05.08.2019 with a condition to cross-examine P.W.1 on 14.08.2019. In spite of giving ample opportunity to the revision petitioner/defendant, P.W.1 was not cross-examined. The Court below is justified in passing the impugned orders and ultimately prayed to dismiss the revision petitions.

6. In view of the submissions made by both sides, the point for determination in these revision petition is:

“Whether the impugned orders dated 29.10.2019, passed in I.A.Nos.336 and 337 of 2019 in O.S.No.128 of 2017 by the learned XIX Additional Senior Civil Judge, City Civil Court at Secunderabad, are liable to be set aside?”

7. POINT: Admittedly, P.W.1 was not cross-examined at all. The reason for change of the counsel by the petitioner/defendant is that inspite of instructions, earlier counsel did not cross-examine P.W.1 and immediately the petitioner/defendant had taken steps to reopen and recall P.W.1 for cross-examination. In the given circumstances, it is relevant to state that the Original Suit is filed for recovery of money. The substantial issue is required to be determined in the suit. If P.W.1 is not cross-examined, the interest of the petitioner/defendant would

certainly be jeopardised. For proper and just adjudication of the subject matter of the suit, the cross-examination of P.W.1 is necessary. Under these circumstances, the impugned orders dated 29.10.2019 are liable to be set aside.

8. In the result, both the Civil Revision Petitions are allowed and the impugned orders dated 29.10.2019 passed in I.A.Nos.336 and 337 of 2019 in O.S.No.128 of 2017 by the learned XIX Additional Senior Civil Judge, City Civil Court at Secunderabad, are set aside. Consequently, I.A.Nos.336 and 337 of 2019 stands allowed as prayed for. The revision petitioner/defendant shall cross-examine P.W.1 within thirty (30) days from today.

Miscellaneous petitions, if any, pending in these Civil Revision Petitions, shall stand closed. There shall be no order as to costs.

Date: 07.01.2020
ssp

Dr. SHAMEEM AKTHER, J