

A.No.3490 of 2021
in C.S(Comm.Div.)No.591 of 2018

DR.G.JAYACHANDRAN, J.

The suit is of the year 2018 filed for recovery of money. Though the case has chequered history, for the purpose of deciding the present application filed by the 2nd defendant to recall the Court witness, Mr.K.V.S.Prakash Rao (CW.2), the former A.G.M., Indian Bank, the following sequence of events are sufficient.

2. The suit having been filed as a commercial dispute, the applicant herein has not filed the written statement, hence his right to file the written statement within the time prescribed got forfeited. Thereafter, the case was sent to the Additional Master for recording evidence. At that stage, the plaintiff has filed an application for passing of summary judgment. The said application No.6828 of 2019 was later withdrawn. Thereafter, the plaintiff viz., Shanmuga Devi was examined as PW.1. Proof affidavit in lieu of chief examination and Ex.P1 to Ex.P9 were marked on 26.09.2019. Thereafter, on the application of the plaintiff, summons was issued to Mr.K.V.S.Prakash Rao, the Assistant Manager and was examined as CW.2. He is now sought to be recalled by the 2nd defendant.

3. The Court records disclosed that pursuant to the order passed by this Court in A.No.7073 of 2019 dated 19.09.2019, Mr.K.V.S.Prakash Rao was present before the Master on 13.11.2019. He was examined as Court witness No.2. When the matter was reverted to the Court for further proceedings, the learned counsel for the 2nd defendant made a representation to the Court to permit him to cross examine the plaintiff who was examined as PW.1. The said request was considered and allowed on payment of costs Rs.10,000/-. Pursuant to the said order dated 26.11.2019, the 2nd defendant had extensively cross examined PW.1. After two years, the present application is filed to recall CW.2. As on date, examination of witnesses on either side almost completed, except formal endorsement.

4. In the present application filed to recall CW.2, the 2nd defendant has stated that due to paucity of time, cross examination of CW.2 could not be completed within the time line fixed by the Court. Since certain facts are to be elucidated from Mr.K.V.S.Prakash Rao (CW.2), it is necessary to recall him. The applicant/2nd defendant is also ready to bear the travel expenses of the witness. If the application is not allowed, the applicant/2nd defendant will be put to a great hardship and irreparable loss.

5. The plaintiff opposing this application has filed counter. The learned counsel for the plaintiff referring the counter submits that, CW.2 was summoned at the behest of the plaintiff and he was present before this Court on 13.11.2019 and was examined by the plaintiff's counsel. Thereafter, the trial has proceeded and the examination of witnesses got completed. The case is adjourned by the Additional Master for recording formal closure of examination of witnesses. At this juncture, this application is filed belatedly after a lapse of two years only to protract the proceedings. The request of the 2nd defendant is not bonafide. The sequence of dates and events would show that after the examination of CW.2 on 13.11.2019, the applicant herein had obtained the leave of the Court to cross examine PW.1 and same was allowed on payment of costs. The applicant cannot compel the witnesses to appear at its will and pleasure.

6. On 26.11.2019 itself the applicant ought to sought leave to recall CW.2 also along with PW.1. Like enforcing the right to cross examine PW.1, some alacrity and vigil should have shown by the applicant/2nd defendant for recalling CW.2 also. But for nearly two years, the applicant has kept quite and only after completion of examination of witnesses, this application is filed

and the reason for the delay has not been sufficiently given in the affidavit.

7. This Court on considering the facts and circumstances of the case, finds force in the respondent/plaintiff submission. Being a commercial dispute before the Commercial Division of High Court, the time line and the procedure, which are very regiment to be scrupulously followed and cannot be floated without reasonable cause. In this case, this Court finds no adequate and reasonable cause to entertain this application to recall witness for cross examination after a delay of two years. Hence the application is dismissed.

8. Post the matter before the Additional Master II on 27.10.2021.

9. After recording the closure of evidence, the matter may be posted before this Court on 02.11.2021

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