

THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

C.R.P.No.1423 OF 2016

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is directed against the order dated 28.01.2016 in I.A.No.131 of 2016 in O.S.No.504 of 2006, on the file of Principal Junior Civil Judge, Sangareddy, wherein the said application filed under Order XVIII Rule 17 of the Code of Civil Procedure, 1908 (for short 'CPC') for recalling the evidence of PWs.1 and 2 for cross-examination, was partly allowed.

2. Heard learned counsel for the petitioner as well as the respondents. Perused the record.

3. The petitioner herein-defendant No.12 filed an application before the trial Court in I.A.No.131 of 2016 in O.S.No.504 of 2006 under Order XVIII Rule 17 CPC to recall the evidence of PWs.1 and 2 to conduct cross-examination. The 1st respondent herein-plaintiff resisted the said petition stating that in spite of giving sufficient opportunity, the petitioner failed to cross-examine the witnesses and on a consideration of the material on record, the trial Court partly allowed the petition for recalling the evidence of PW2 for the purpose of

cross-examination and dismissed the said application for recalling of PW1 due to her absence in India. Aggrieved by the same, the present civil revision petition is filed.

4. Learned counsel for the petitioner submits that the trial Court committed error in not recalling PW1 for the purpose of cross-examination stating that she is not available in India. The cross-examination of PWs.1 and 2 are very much essential for proper adjudication of the case otherwise grave injustice would be caused to the petitioner. Therefore, he prayed to allow the revision.

5. Learned counsel for the first respondent submits that in spite of granting sufficient opportunity, the petitioner failed to cross-examine the witnesses and there are no merits in the application, as such the trial Court has rightly dismissed the application. Learned counsel further placed reliance on the judgment of the Hon'ble Apex Court in **GAYATHRI v. M. GIRISH**¹, wherein it was held at para 6, as under:

6. In K.K. Velusamy (supra), while dealing with the power of the Court under Order XVIII Rule 17, this Court held that :-

¹ SSC, SLP _ OF 2016 (cc No.14061 of 2016)

“9. Order 18 Rule 17 of the Code enables the court, at any stage of a suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness under Order 18 Rule 17 can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. [Vide *Vadiraj Nagappa Vernekar v. Sharadchandra Prabhakar Gogate* – 2009 (4) SCC 410].

10. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any

witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either *suo motu*, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.”

And again:-

“19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be *bona fide* and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence.

But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.

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21 Ideally, the recording of evidence should be continuous, followed by arguments, without any gap. Courts should constantly endeavour to follow such a time schedule. The amended Code expects them to do so. If that is done, applications for adjournments, re-opening, recalling, or interim measures could be avoided. The more the period of pendency, the more the number of interlocutory applications which in turn add to the period of pendency.”

6. A perusal of the record would disclose that the trial Court refused to recall PW1 for cross-examination, as she was not available in India.

The trial Court in the impugned order has considered the contentions of both the parties and partly allowed the application filed for recalling the evidence of PW1 for cross-examination.

7. Learned counsel for the first respondent has informed that PW1 and PW2 both are available in India. Having considered the same, in the interest of justice, it would be appropriate to consider the request of the petitioner to give him opportunity to cross-examine the witness, however, on some terms permission can be granted to petitioner to cross-examine the witness.

8. In the result, the civil revision petition is allowed by setting aside the impugned order dated 28.01.2016. Consequently, I.A.No.131 of 2016 in O.S.No.504 of 2006, on the file of Principal Junior Civil Judge, Sangareddy is allowed, on condition of petitioner depositing costs of Rs.10,000/- to the suit account, payable to the respondents. On such deposit, the trial Court shall fix a date for proceeding with cross-examination of PWs.1 and 2 by the counsel for the petitioner and dispose of the suit as expeditiously as possible, preferably within a

period of four (04) months from the date of receipt of a copy of this order.

10. As a sequel to, miscellaneous applications pending, if any, shall stand closed.

A.SANTHOSH REDDY, J

Date: 03.01.2023

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