



HIGH COURT OF ANDHRA PRADESH
FRIDAY ,THE TWENTY FOURTH DAY OF JUNE
TWO THOUSAND AND TWENTY TWO

PRSENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI
CIVIL REVISION PETITION NO: 3562 OF 2019

Between:

1. PAILA REGARAO S/o. Late Appalanaidu,
Hindu, Aged 38 years, Male,
Residing in Vennelapalem Village,
Paravada Mandal, Visakhapatnam District.

...PETITIONER(S)

AND:

1. PRAGADA RAMA RAO S/o. Govindarajulu,
Hindu, Male, Aged 54 years, Residing
Near Sub-Station, New Colony, Paravada Village,
Paravada Mandal, Visakhapatnam District

...RESPONDENTS

Counsel for the Petitioner(s): MANGENA SREE RAMA RAO

Counsel for the Respondents: GHANTASALA UDAYA BHASKAR

The Court made the following: ORDER



THE HON'BLE Ms. JUSTICE B. S. BHANUMATHI

Civil Revision Petition No.3562 of 2019

ORDER:

This revision, under Article 227 of the Constitution of India, is filed by the unsuccessful defendant feeling aggrieved by order, dated 16.10.2019, passed in I.A.No.217 of 2019 in O.S.No.214 of 2016 on the file of the Court of the learned Principal Senior Civil Judge, Anakapalle,

2. Heard *Sri Mangena Sree Rama Rao*, learned counsel appearing for the revision petitioner/defendant and *Sri Ghantasala Udaya Bhaskar*, learned counsel for the respondent/plaintiff. The parties shall hereinafter be referred to as the plaintiff and defendant for convenience and clarity.

3. The facts that lead to filing of this revision by the revision petitioner/defendant, in brief, are as follows:

The respondent/plaintiff filed a suit in O.S.No.214 of 2016 on the file of the Court of Principal Senior Civil Judge, Anakapalle, for recovery of a sum of Rs.5,15,400/- and subsequent interest thereon basing on a promissory note, dated 30.12.2013. The defendant contested the suit by filing a written statement and specifically pleading that the suit promissory note is fabricated. While so, the plaintiff, after adducing his evidence as PW1, filed the chief affidavit of PW2 who is one of the attestors of exhibit A1, suit promissory note. Thereafter, the plaintiff found that there are certain clerical and typographical mistakes in the evidence of PW2. In view of the



ambiguity on account of mistakes occurred in the chief affidavit of PW2, the plaintiff intended to adduce evidence of Paila Sanyasi Rao who is one of the attestors of suit pronote, exhibit A1, for better appreciation of his case after eschewing his earlier evidence filed in the form of affidavit. For that purpose, the plaintiff filed I.A.No.217 of 2019 under Section 151 CPC seeking to permit him to adduce of the evidence of Paila Sanyasi Rao in the correct form, as he is an essential witness.

4. The defendant filed counter opposing the petition and contending that once the witness files an affidavit on oath before the Court and confronted with his chief examination, the same is binding on him and it cannot be eschewed. Even otherwise, once evidence is eschewed on behalf of a witness, he has no opportunity to give evidence in the same case again on his behalf. According to the defendant, once the evidence affidavit in chief examination was filed by a party, the party is bound by the affidavit and to complete the evidence, but cannot change the evidence subsequently. The petition is not maintainable and is liable to be dismissed.

5. The trial Court, upon hearing the contentions of the parties, allowed the petition, taking all the facts and circumstances of the case into consideration, with the observations that the entire evidence affidavit of witness PW2 is not changing and due to clerical and typographical mistakes only it is typed as 'defendant' in place of 'plaintiff' and 'plaintiff' instead of the 'defendant'.

6. Before this Court, it is vehemently argued by the learned counsel for the revision petitioner that when once evidence of a witness is



eschewed, evidence of the same witness cannot be taken and since in the present case, the evidence of PW2 in the form of affidavit has already been taken on file, he cannot again be permitted to file fresh affidavit. In support of his contention, he placed reliance on the decision of High Court in **V.Rama Naidu and another v. V.Ramadevi**¹.

7. On the other hand, learned counsel for the respondent/plaintiff contended that a memo has been filed by the respondent/plaintiff before the trial Court informing the Court about the typographical error crept in the affidavit filed earlier and seeking permission to file a fresh affidavit by eschewing the earlier affidavit taken on file, but no order was passed on the memo, and further the plaintiff filed I.A.No.217 of 2019 to permit him to adduce evidence of the same witness by filing correct form of affidavit.

8. Learned counsel for both the parties admitted that objections were filed by the defendant on the memo filed by the plaintiff and the same objections are also mentioned in the counter to I.A.No.217 of 2019 and further that the objections to the memo and the counter in the IA were filed on the same date. Instead of passing orders on the memo, the trial Court disposed of I.A.No.217 of 2019.

9. This Court does not see any impropriety in disposing of the petition only without passing orders on the memo, since contentious issues in both of them are the same and they are dealt with in the petition. In fact, instead of passing orders on a memo, it is always proper to pass orders on petitions. As such, legal remedies can be taken against such orders.

¹ 2018 (5) ALD 87



10. Now, what is to be seen is whether the trial Court is in error in permitting the petitioner/plaintiff to file a fresh affidavit?

11. The current position is that earlier affidavit of the witness is on record and there is no express order eschewing the same. PW2 is an attester to the suit promissory note and he stated in the affidavit that the defendant borrowed a certain amount from the plaintiff. It is obvious that he intended to state further that the plaintiff paid the said amount to the defendant, but, it is stated in the affidavit that the defendant paid the above said amount to the plaintiff and passed consideration before him. In the above circumstances, filing of fresh affidavit with the pointed out correction cannot even be treated as withdrawal of an admission amounting to prejudice to the defendant, since it is only an apparent error. It is a clear case of typographical error, that instead of stating that 'the plaintiff paid amount', it is stated that 'the defendant paid the amount'. Since this witness is giving evidence in support of the plaintiff as an attesting witness and in the preceding statement in the affidavit, he stated that the defendant borrowed the amount and executed promissory note and further he stated that consideration was passed before him, it cannot be said that the defendant would pay amount to the plaintiff in that context. Human errors are very much possible. According to the case of the petitioner, it is a typographical error occurred in preparation of the affidavit. Just because a witness stated before the Court when the affidavit is filed that the contents of the chief examination affidavit are true and correct, yet he may not be conscious of the said error and stated it to be correct. Therefore, such statement cannot be treated as gospel truth. By reading the definition of 'proved' etc in Section 3



of the Evidence Act, it is clear that a Court is empowered to evaluate any statement of a witness using parameters of a prudent person. Thus, this statement of any witness can also be put to the same test. It is usual practice not to read out every sentence of the affidavit before confirming its contents. As such, possibility of error cannot be ruled out. When it can be clearly demonstrated that it is an unconscious mistake inadvertently crept in, the hands of the Court are not tied to allow error to remain, because the ultimate function of the Court is to find out the truth and not to stick to too rigid technicalities, even though the error is apparent on the face of the record. Ultimately, strength in the case of either of the parties would be decided on the basis of the evidence placed before the Court. As such, the witness can be permitted to state on oath about the error crept in the affidavit already filed and allow him to make his own statement about the said fact and proceed thereafter for cross-examination instated of eschewing the affidavit already filed and taking a fresh affidavit since the cross-examination has not been done so far.

12. Learned counsel for the revision petitioner placed reliance on the above decision to the effect that when once the affidavit of a witness is taken into consideration, it becomes evidences and loses its character as an affidavit and thus, the restriction as to applicability of the provisions of the Indian Evidence Act, 1872, incorporated in Section 3 of the Evidence Act do not arise, and therefore, all the provisions of the Evidence Act are applicable to the regular evidence do apply to the evidence taken in the form of affidavit. He laid stress in the backdrop of the contention that the evidence in the form of affidavit which is already taken on file has been eschewed. At the cost of repetition, it is



noted here that there is no order passed eschewing evidence so far. Therefore, all the contentions raised in this regard do not merit any consideration. When one affidavit is already on record, without taking it off the record, second affidavit of the same evidence cannot be taken as it is duplication of evidence.

13. In view of the foregoing discussion, the revision petition can be allowed modifying the impugned order, dated 16.10.2019, to the effect that the witness can be permitted to state on oath about the error crept in the affidavit already filed and allow him to make his own statement about the said fact, and proceed thereafter for cross-examination instated of eschewing the affidavit already filed and taking a fresh affidavit.

14. Accordingly, the Civil Revision Petition is allowed modifying the impugned order as indicated in the preceding paragraph.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, in this revision shall stand dismissed.

B. S. BHANUMATHI, J

24-06-2022

Note:- LR copy to be marked
(B/o)
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