2019:APHC:15843

HIGH COURT OF ANDHRA PRADESH

THURSDAY ,THE TWENTY EIGHTH DAY OF MARCH

TWO THOUSAND AND NINETEEN

PRSENT

THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION NO: 7435 OF 2017

Between:

1. VELUGU ESWARAMMA Occ. Housewife, R.No. Parnapalle Road, Pulivendula Town and Mandal, Kadapa District,
2. Velugu Jagan Mohan Reddy Parnapalle Road, Pulivendula Town and Mandal Kadapa District

...PETITIONER(S)

AND:

1. V. Shoba Rani Velugu Shoba Rani, Occ.Housewife, P.Add. R.No. K. Velamavaripalli Village, Pulivendula Mandal, Kadapa District, Presently Residing at Indira Nagar, Bangalore

...RESPONDENTS

Counsel for the Petitioner(s): 4119/RAJANIKANTH JWALA

Counsel for the Respondents: SUDARSHAN REDDY DUDDUGUNTA

The Court made the following: ORDER

2019:APHC:15843

IN THE HIGH COURT OF ANDHRA PRADESH

THURSDAY, THE TWENTY EIGHTH DAY OF MARCH
TWO THOUSAND AND NINETEEN

PRESENT

THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION Nos. 7435 & 7439 OF 2017

CRP No.7435 of 2017:

(Petition under Article 227 of Constitution of India aggrieved by the order dated 24-8-2017 in IA No.483 of 2017 in OS No.20 of 2010 on the file of the court of the Additional Senior Civil Judge, Kadapa.)

Between:

1. Velugu Eswaramma, W/o.Papi Reddy
2. Velugu Jagan Mohan Reddy, S/o.V.Papi Reddy

...Petitioners/Petitioners/Defendants

AND

Velugu Shoba Rani, W/o.H.K.Naga Raju **...Respondent/Respondent/Plaintiff**

IA NO: 2 OF 2017

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to stay all further proceedings in OS.No. 20 of 2010, on the file of the Additional Senior Civil Judge, Kadapa, Andhra Pradesh, pending disposal of the above CRP.

For the Petitioners: SRI RAJANIKANTH JWALA, Advocate

For the Respondent: SRI D.SUDARSHAN REDDY, Advocate

CRP No.7439 of 2017:

(Petition under Article 227 of Constitution of India aggrieved by the order dated 24-8-2017 in IA No.484 of 2017 in OS No.20 of 2010 on the file of the court of the Additional Senior Civil Judge, Kadapa.)

Between:

1. Velugu Eswaramma, W/o.Papi Reddy
2. Velugu Jagan Mohan Reddy, S/o.V.Papi Reddy

...Petitioners/Petitioners/Defendants

AND

Velugu Shoba Rani, W/o.H.K.Naga Raju **...Respondent/Respondent/Plaintiff**

IA NO: 2 OF 2017

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to stay all further proceedings in OS.No. 20 of 2010, on the file of the Additional Senior Civil Judge, Kadapa, Andhra Pradesh, pending disposal of the above CRP.

For the Petitioners: SRI RAJANIKANTH JWALA, Advocate

For the Respondent: SRI D.SUDARSHAN REDDY, Advocate

The Court made the following Common Order:

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

C.R.P.Nos.7435 and 7439 of 2017

COMMON ORDER:

Both these Civil Revision Petitions arise out of the same suit in O.S.No.20 of 2010 on the file of the Additional Senior Civil Judge, Kadapa,

I.A.No.483 of 2017 which was filed to reopen the matter was dismissed on 27.01.2017. Questioning the same, C.R.P.No.7435 of 2017 is filed.

I.A.No.484 of 2017 which was filed to reopen the evidence for cross-examination of P.W.1 was dismissed on 24.08.2017. Questioning the same, C.R.P.No.7439 of 2017 was filed.

With the consent of both the counsel the matters are taken up for hearing together. The arguments were essentially advanced in C.R.P.NO.7439 of 2017. This Court has heard Sri Jwala Rajanikanth, learned counsel for the revision petitioners and Sri Duddugunta Sudarshan Reddy, learned counsel for the respondent.

The contention of the learned counsel for the petitioners is that the Court below committed an error in coming to the conclusion that there are no grounds to reopen or to recall the witness-P.W.1. It is his contention that the Court could have allowed the application and that the past mistakes of the revision petitioners could not have been considered as a ground for rejecting the present application. It is also his contention that Order XVIII Rule 17 and Section 151 of C.P.C. are applicable to the facts and circumstances of the case and that therefore, the Court should have allowed the application. It is his further contention that the valuable right that is given to a party to cross-examine the

witness has been taken away by this Order. Learned counsel relies upon the judgments of the Hon'ble Supreme Court reported in **Vadiraj Nagappa Vernekar (Dead) through LRs., *v* Sharadchandra PRabhakar Gogate[1], K.K. Velusamy *v* N. Palanisamy[2]** and **Ram Rati *v* Mange Ram (Dead) Through Legal Representatives and others[3].** He therefore prays the Revision Petitions should be allowed.

In response to this, learned counsel for the respondent relies on two judgments of the single Judges of this Court reported in **Cheerla @ Cuddapah Naganna *v* Koya Naganna[4]** and **Allumalla Kannam Naidu *v* Allumalla Simhachalam[5]** to contend that the affidavit filed is absolutely silent about the need to re-examine the witness and the reasons furnished in the application are not genuine or correct. Learned counsel and in fact points out that certain important legal aspects have to be brought out is the reason given in the application. He also points out that in fact number of adjournments were taken by the petitioners and the same is reproduced in the order. Therefore, learned counsel submits that the impugned orders do not suffer from any infirmity.

In both the cases the law relied upon by both the parties is very germane and relevant to the cases on hand. The Hon'ble Supreme Court of India clearly noticed the principles that are involved in an issue like this. The first judgment of the Hon'ble Supreme Court of India reported in **Vadiraj Naggappa Verenkar case (1 supra)** decided as follows:

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[1] (2009) 4 Supreme Court Cases 410
[2] (2011) 11 Supreme Court Cases 275
[3] (2016) 11 Supreme Court Cases 296
[4] 2008 (2) ALT 595
[5] AIR 2003 AP 239

"25. In our view, though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the court, while trying a suit, to clarify and doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

26. As indicated buy the learned Single Judge, the evidence now being sought to be introduced by recalling the witness in question, as available at the time when the affidavit of evidence of the witness was prepared and affirmed. It is not as if certain new facts have been discovered subsequently which were not within the knowledge of the applicant when the affidavit evidence was prepared.

.....

.....

31. Some of the principles akin to order 47 CPC may be applied when a party makes an application under the provisions of Order 18 Rule 17 CPC, but it is ultimately within the court's discretion, if it deems fit, to allow such an application. In the present appeal, no such case has been made out." (Emphasis supplied).

The second judgment reported in **K.K. Velusamy case (2 supra)** it is held as follows:

"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 18 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 Dadiraj Nagappa Vernekar V. Sharadchandra Prabhakar Gogate).

.....

.....

14. ..... But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands on earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under Section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.

.....

.....

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." (Emphasis supplied)

The third judgment reported in **Ramrati case (3 supra)** contains the following paragraphs:

"9. The trial Court, by order dated 18.12.2010, allowed the application filed by the respondent..."for further elaboration on the left out points by the parties....". the High Court, in the impugned order, endorsed the view taken by the trial court holding that: (Ram Rati case, SCC Online Del para 6)

> *"6.....reading the impugned order shows that the witness has been recalled, if available, for further elaboration on the left out points to both the parties."*
>
> .....
>
> 18. The settled legal position under Order 18 Rule 17 read with Section 151 CPC, being thus very clear, the impugned orders passed by the trial court as affirmed by the High Court to recall a witness at the instance of the respondent "for further elaboration on the left out points", is wholly impermissible in law.
>
> 19. In the above circumstances, the impugned order is set aside and the appeal is allowed."

In addition, the judgments cited by the respondents clearly state that the power to recall a witness has to be judicially exercised in the facts and circumstances of the particular case. To the same effect the judgment of the single Judge of this Court reported in **Allumalla Kannam Naidu case (5 cited).**

The conclusions that are to be drawn from these five judgments, which were cited across the bar are –

(1) that although Order 18 Rule 17A of CPC has been deleted, it does not mean that there is no power at all in the Court to recall a witness for cross-examination.

(2) The inherent power that is available in the Court under Section 151 of CPC can be called into aid by a party for the purpose of recalling a witness.

(3) Since the power is being exercised under Section 151 of CPC the Court should be very careful and circumspect in recalling the witness only when it is absolutely necessary. Since there is no provision in the Court covering the matter, the findings of the Hon'ble Supreme Court of India in para 12 of the judgment in **K.K. Velusamy (2 supra)** are clear.

2019:APHC:15843

(4) That the application for recalling a witness should be drafted with care and caution and the principles analogous to Order 47 CPC should be applied for the purpose of recalling the witness.

The principles that can be deduced are that a person has discovered a new and important matter or evidence which despite the due diligence was not within his knowledge when the examination was done or the cross-examination was carried out and which could not be produced earlier or there is a mistake or error apparent on the face of the record or any other sufficient reason. In view of the language in Order 47 of CPC, the principle of *ejusdem generic* rule applies and the words 'sufficient reason' should be interpreted in the like manner. These are general examples being given and this is not an exhaustive list of reasons.

Against this backdrop of the three judgments of the Supreme Court of India and two judgments of the High Court of Andhra Pradesh, if the present matter is examined, the affidavit suffers from certain defects.

1) It is mentioned that the counsel could not by oversight cross-examined P.W.1 on certain important "legal" aspects;
2) The counsel could not cross-examine the P.W.1 about the entries in the pattadar passbook and title deed books (Exs.A.3 to A.5) and their mode of execution; and
3) Lastly, the counsel could not cross-examine P.W.1 about the contentions raised in the written statement to disprove the plaintiff's contention.

The Hon'ble Supreme Court of India clearly stated that the grounds that should be raised in an application filed to recall of witness should be analogous to those mentioned in Order 47 of CPC when a review is sought. Therefore, the discovery of new or important evidence, which could not be produced earlier despite due diligence or a similar cause should be pleaded with clarity in the affidavit. In the judgment reported in **Ram Rati Case (3 supra)** the application filed by the respondent to recall a witness was necessary "for further elaboration on the left out points". The Hon'ble Supreme Court of India in paragraph 18 of the judgment clearly held that recalling of a witness "for further elaboration on the left out points", is wholly impermissible in law. Learned single Judge of this Court in **Allumalla Kannam Naidu (5 supra)** also held that the affidavit filed in support of the application in the case was not convincing, wherein, it is mentioned that certain important and crucial aspects were not cross-examined by the counsel.

In addition to this legal issue, this Court also noticed the dates on which the adjournments were sought and also notices that P.W.1 was cross-examined on 21.03.2016, on 21.06.2016 and on 22.07.2016. Thus it can be seen that there was a clear gap of more than approximately three months in the first two dates and about a month's gap in the third date to cross-examine. The Cross-examination on 21.03.2016 is preceded by the filing of the chief-examination in February, 2016 and the actual chief-examination was done on 18.02.2016. Therefore, it is clear that the learned counsel had a lot of time to prepare and also to cross-examine the witness. Despite the long time gap that was available the petitioners felt that they could not cross-examine the witness, but they did not specify what was the issue that they discovered

2019:APHC:15843

subsequently, which would entitle them to seek recall of the witness. A sweeping statement of the nature that the counsel could not cross-examine P.W.1 about the contentions raised by the petitioners in the written statement, is in the opinion of this Court not acceptable at all. The affidavit is thus lacking in the required particulars / details, which would enable the Court to recall the witness. This Court also cannot forget the fact that Order 18 Rule 17-A of CPC was deliberately deleted by the amendment of the CPC. Thereafter, in a series of judgments the Hon'ble Supreme Court India has held that although Order 18 Rule 17-A of CPC has been deleted the power to recall a witness is available under Section 151 of CPC. Since the power is being exercised under Section 151 of CPC the Hon'ble Supreme Court of India in **K.K.Velusamy case (2 supra)** judgment has sounded a note of caution in the manner of exercise of the said power. The discretion to be exercised by the Court under Section 151 of CPC does not extend to grant any and every relief. The inherent power can only be exercised for rendering justice and to do all things necessary to secure the ends of justice. While exercising the said power circumspection and care must be taken and the power should be sparingly used and particularly when the Court feels it is absolutely necessary to do so. Therefore, before any Court is called upon to exercise its discretion to recall a witness the application should clearly meet the tests laid down in **Vadiraj Naggappa Vernekar case (1 supra)** and **K.K. Velusamy case (2 supra).** The principles analogous to Order 47 CPC should be pleaded and set out with some certainty. The normal practice to fill up the gaps in the evidence by recalling the evidence should be severely curtailed.

Therefore, in conclusion, this Court in these two Civil Revision Petitions holds that the affidavit filed to recall the witness does not meet the standards laid down by the Hon'ble Supreme Court of India in the judgments. The failure to cross-examine the witness on certain aspects by itself is not a ground enough to recall the witness for the purpose of further cross-examination. If this is allowed the gaps will be filled up. The entire branch of developed case law of the highest courts in the country, including the Hon'ble Supreme Court of India, on the failure to cross-examine a witness etc., will be set at naught, if every witness is recalled on such tenuous grounds. The grounds to reopen the matter are also similar in this case. They are not enough to reopen the case. For all these reasons, this Court holds that both the Civil Revision Petitions do not have any merits whatsoever.

Therefore, both the Civil Revision Petitions are dismissed. As the suit is of the year 2010, the lower Court is directed to proceed with the hearing of the suit on a priority and ensure that the trial is completed quickly. Requests for adjournments should be dealt with strictly. Every endeavour should be made to complete the trial and pronounce the judgment within six months from the date of receipt of a copy of this order. In the circumstances, there shall be no order as to costs.

Consequently, the Miscellaneous Petitions, if any pending, shall also stand dismissed.

Sd/- M.RAMESH BABU
ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

One Fair Copy to the Hon'ble SRI JUSTICE D.V.S.S.SOMAYAJULU
(For His Lordship's Kind Perusal)

To

1. The Additional Senior Civil Judge, Kadapa.
2. 9 L.R. Copies.
3. The Under Secretary, Union of India, Ministry of Law, Justice & Company Affairs, New Delhi.
4. The Secretary, Advocates' Association (AP) Library, High Court Buildings, Amaravati.
5. One CC to Sri Rajanikanth Jwala, Advocate [OPUC]
6. One CC to Sri D.Sudershan Reddy, Advocate [OPUC]
7. Two C.D. Copies.

MRC

8. The Section Officer, E.R. Section, High Court of at Amaravathi.
9. The Section Officer, V.R. Section, High Court at Amaravathi.

HIGH COURT

DATED: 28-03-2019

2019:APHC:15843

OC
21/5/19

COMMON ORDER

CRP Nos.7435 & 7439 OF 2017

Rs. 15-00
10

DISMISSING THE BOTH CRPs WITHOUT COSTS.

Received
24/4/19

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