THE HON'BLE DR. JUSTICE K. MANMADHA RAO

C.R.P.No.1853 of 2023

ORDER:

This Revision Petition, under Article 227 of the Constitution of India, is preferred against the order, dated 21.06.2023, in I.A.No.288 of 2023 in O.S.No.395 of 2018 on the file of the Court of the Principal Senior Civil Judge, Ongole, Prakasam District filed under Section 151 and order 18, rule 7 of C.P.C seeking to recall DW-1 and DW-3 for further cross examination with regard to payment of consideration and other disputes of Ex.A1 transaction.

2. The petitioner herein is the plaintiff; the respondents herein are the defendants in the suit.

3. The plaintiffs filed the suit in O.S.No.395 of 2018 filed to cancel the Registered Sale Deed dated 11.04.2018 bearing No.1628 of 2018 executed in favour of 1st defendant by the plaintiff for the suit schedule property and same is pending. In the said suit an application in I.A.No. 288 of 2023 has been filed to recall DW-1 and DW-3 for further cross examination. The trial court dismissed the said application on the ground that the petitioner filed the application to fill up the lacunae and it would cause great prejudice to the 1st respondent and there is no justifiable cause to reopen and recall the witnesses after closure of the evidence on the

side of defendants. Assailing the same, the present Revision came to be filed.

4. Heard Sri K. Koutilya, learned counsel for the petitioner parties and Sri N. Madhava Reddy, learned counsel for the respondents.

5. During hearing learned counsel for the petitioner would contend that the trial court wrongly came to a conclusion that the application was filed after the suit reserved for Judgment, in fact the matter has been posted for arguments of the plaintiff on 24.07.2023 as per e-courts status. It is further contended that it is primarily to enable the court to clarify any issue or doubt by recalling any witness either suo-motu or on application of any party so that the court can itself put questions and elicit answers, which is also observed by the Hon'ble Apex Court in "***Vadiraj Naggappa Vernekar vs. Sharadchandra Prabhakar Gogate"***[1] wherein it was held as follows:

> *16. In our view, though the provisions of Order 18 Rule 17 Civil Procedure Code 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 any doubts which it may have with regard to the evidence led by the parties. The said provisions are not*

[1] (2009) 4 SCC 410

intended to be used to fill up omissions in the evidence of a witness who has already been examined. As indicated by the learned Single Judge, the evidence now being sought to be introduced by recalling the witness in question, was 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. In the instant case, Sadanand Shet was shown to have been actively involved in the acquisition of the flat in question and, therefore, had knowledge of all the transactions involving such acquisition. It is obvious that only after cross-examination of the witness that certain lapses in his evidence came to be noticed which impelled the appellant to file the application under Order 18 Rule 17 CPC. Such a course of action which arises out of the fact situation in this case, does not make out a case for recall of a witness after his examination has been completed. The power under the provisions of Order 18 Rule 17 Civil Procedure Code is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 Civil Procedure Code.

17. It is now well settled that the power to recall any witness under Order 18 Rule 17 Civil Procedure Code can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination. Of course, if the evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, it is always within the discretion of the Trial Court to permit recall of such a witness for re-examination-in-chief with permission to the defendants to cross-examine the

witness thereafter. There is nothing to indicate that such is the situation in the present case. Some of the principles akin to Order 47 Civil Procedure Code may be applied when a party makes an application under the provisions of Order 18 Rule 17 Civil Procedure Code, 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."

Further he relied on a decision of ***"K.K. Velusamy vs. N. Palanisamy"[2],*** wherein it was held as follows:

16. 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. It 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 bonafide 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 the award appropriate costs to the other party a 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. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. if the party had an opportunity to produce such

[2] (2011) 11 SCC 275

evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application.

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18. In this case, we are satisfied that in the interests of justice and to prevent abuse of the process of court, the trial court ought to have considered whether it was necessary to reopen the evidence and if so, in what manner and to what extent further evidence should be permitted in exercise of its power under section 151 of the Code. The court ought to have also considered whether it should straightway recall PW1 and PW2 and permit the appellant to confront the said recorded evidence to the said witnesses or whether it should first receive such evidence by requiring its proof of its authenticity and only then permit it to be confronted to the witnesses (PW1 and PW2).

But, it is contended that the trial court wrongly came to conclusion that the suit was posted for judgment, at that stage the application is filed to recall the witnesses for further cross examination. The evidence of DW-1 and 3 are crucial to substantiate his case. Therefore the present revision came to be filed.

6. Whereas learned counsel for the respondents would contend that after hearing arguments of the petitioner, filed the application with false allegations, though the petitioner is very

much present from the date of commencement of trial till the date of completion of evidence on both the sides. At the stage of judgment, the petitioner filed the application to recall DW-1 and 3 for further cross examination with an intention fill up the lacunae cannot be permitted in view of the ratio laid by the Hon'ble Supreme Court in ***"Bagai Construction, through its proprietor Lalit Bagai vs. Gupta Building Material Store"***[3] wherein it was held as follows:

> *"14. The perusal of the materials placed by the plaintiff which are intended to be marked as bills have already been mentioned by the plaintiff in Its statement of account but the original bills have not been placed on record by the plaintiff till the date of filing of such application. It is further seen that during the entire trial, those documents have remained in exclusive possession of the plaintiff but for the reasons known to it, still the plaintiff has not placed these bills on record. In such circumstance, as rightly observed by the trial court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of the judgment, we are of the view that the plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him. As rightly observed by the trial court, there is no g acceptable reason or cause which has been shown by the plaintiff as to why these documents were not placed on record by the plaintiff during the entire trial. Unfortunately, the High Court taking note of the words "at any stage" occurring in Order 18 Rule 17 casually set aside the order of the trial court, allowed those applications and permitted the plaintiff to place on record certain bills and also*

[3] (2013) 14 SCC 1

granted permission to recall PW 1 to prove those bills. Though power under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of court and court can exercise its discretion to permit reopening of evidence or recalling of witness for further examination/cross-examination after evidence led by the parties, in the light of the information as shown in the order of the trial court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 CPC, the plaintiff cannot be permitted.

7. Therefore, learned counsel for the respondent vehemently opposed to allow the revision and requested to dismiss the same.

8. The trial court observed that the trial was completed on both sides on 13.02.2023 and posted for arguments to 17.02.2023 and the same is being adjourned from time to time from 17.02.2023 to 01.03.2023. Finally on 01.03.2023 the matter was heard on sides and posted for judgment on 07.03.2023, but on the day, the application for recalling the DW-1 and 3 filed and to reopen the suit for further cross examination. Further, the trial court held that the reason mentioned for recalling the witnesses for further cross examination being that of not briefing properly to the counsel at the time of cross examination of DW-1 and 3, cannot be accepted as a ground for recalling of the witnesses for further cross examination. Moreover, the application is filed at

belated stage without cogent reasons, which is filed to fill up the lacunae. Therefore, trial court dismissed the application.

9. Upon perusal of the record would go to show that there is no impropriety or illegality in the order of the trial court and also finds that there is no sufficient grounds mentioned as to how their evidence is required, which fact is not mentioned. Therefore, this Court opined that there is no merit in the argument of the learned counsel for the petitioner. Hence, the trial court has given proper reasons by taking into consideration of the facts on record properly and answered the same. The court below has dealt the issue in a right perspective and hence the order impugned requires no interference of this Court.

10. Having regard to the facts and circumstances of the case, upon perusal of the material on record and considering the submissions of both the counsel, the C.R.P is dismissed. There shall be no order as to costs.

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

DR.K.MANMADHA RAO, J

Date: 18.08.2023.

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THE HON'BLE DR. JUSTICE K. MANMADHA RAO

C.R.P.No.1853 of 2023

Date:18.08.2023.

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