

P. Bhaskara Rao Vs. Wolfgang Ormeloh and Another

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Court : Andhra Pradesh

Decided On : Sep-21-2012

Judge : Noushad Ali

Appeal No. : C.R.P. Nos.3404 of 2010, 3405 of 2010 & 3406 of 2010

Appellant : P. Bhaskara Rao

Respondent : Wolfgang Ormeloh and Another

Advocate for Def. : Smt. Sangeeta Bhaskar

Advocate for Pet/Ap. : Sri. Y. Ratnakar

Judgement :

Common order :

1) These Revision Petitions are connected arising out of the same suit between the same parties and involve common facts and law. Hence the revision petitions are disposed of by this common order.

2) The petitioner herein is the plaintiff and respondents 1 and 2 herein are defendant Nos.2 and 3 in O.S.No.354 of 2006 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad. Defendant No.2 (respondent No.1 herein) is the Managing Director of defendant No.3 (respondent No.2 herein) Company. Respondent No.3 herein viz., P.Surya Prakash, Company Secretary, is defendant

No.1 in the suit.

3) For the sake of convenience, the parties herein are referred by their status in the suit.

4) The plaintiff filed the aforesaid suit bearing O.S.No.354 of 2006 claiming from the defendants Rs.20,00,000/- as damages for defamation alleging that the defendants made false allegations and claims against the plaintiff. The defendants 2 and 3 (Respondents 1 and 2) were set ex parte in the suit on 30-10-2006 and defendant No.1 (Respondent No.3 herein) was set ex parte on 30-11-2006.

5) I.A.No.3913 of 2006 was filed by the defendants 2 and 3 under Order 9, Rule 7 C.P.C. for setting aside the ex parte order. The said I.A. was allowed on 30-11-2006 on condition to pay costs of Rs.500/-. Defendants 2 and 3 did not comply with the conditional order, hence the I.A. for setting aside the ex parte order was dismissed by order dated 22-12-2006. These defendants filed another I.A.No.4642 of 2006 under Section 148 C.P.C., seeking extension of time for filing written statement. The said I.A. was dismissed on 22.12.2006. A revision petition C.R.P.No.3519 of 2007 preferred against the said order was dismissed by this Court on 28.12.2007. In the meanwhile, consequent upon the dismissal of the aforesaid I.As., the suit was posted for plaintiff's evidence on 17-01-2007. On 17-01-2007, I.A.No.3913 of 2007 was closed for non-compliance of the conditional order. On the same day, the plaintiff filed his examination-in-chief and marked Exs.A1 to A11 documents. The case was adjourned on a couple of occasions on the ground that the aforesaid C.R.P. was pending in the High Court After it was brought to the notice of the lower Court that the C.R.P. was not even registered, the case was posted for judgment to 14-08-2007. In the meanwhile, stay was granted in the C.R.P. on 10-08-2007 and the matter was adjourned to 23-11-2007. Stay was vacated on 14-09-2007, hence the matter was again posted for judgment to 11-12-2007 on 29-11-2007. When the matter was kept reserved for judgment, defendants 2 and 3 filed the instant I.As. to reopen the case and permit them to cross-examine P.W.1. The said I.As., were allowed by the Court below by orders, dated 10-12-2009, which are impugned in these C.R.Ps.

- 6) Heard Sri.Y.Ratnakar, learned counsel for the petitioner and Smt. Sangeeta Bhaskar, learned counsel for the Respondents 1 and 2 in the above C.R.Ps.
- 7) Sri Y. Ratnakar, learned counsel for the petitioner would challenge the orders on three grounds - (i) it is contended that the request of the defendants 2 and 3 to open the suit and to permit them to cross-examine the plaintiff filed under Order 18, Rule 17 is not maintainable. According to the counsel, under the said provision, the Court alone is competent to recall a witness and put questions to him in appropriate cases; therefore, according to the learned counsel, the impugned orders permitting the defendants 2 and 3 for cross-examining the plaintiff are without jurisdiction; (ii) the defendants 2 and 3 are not entitled for the discretionary relief. According to the learned counsel, these defendants abused the process of law and mislead the trial Court by falsely representing that the suit proceedings were stayed by the High Court, therefore their conduct should disentitle them for indulgence even for their participation in the suit; and (iii) in any event, the trial Court is not justified in granting relief beyond the prayer of the defendants 2 and 3. Learned counsel would state that the defendants merely wanted recall of PW.1 for cross-examination, whereas the Court has permitted them to adduce evidence on their behalf in addition to the said prayer.
- 8) Smt. Sangeeta Bhaskar, the learned counsel for the respondents 1 and 2 herein/defendants 2 and 3 would however support the orders. She would contend that though the defendants 2 and 3 are not permitted to file written statements, they are entitled to participate in the suit at least from the left over stage. She would further contend that the defendants should have fair opportunity to meet the case of the plaintiff in view of the huge claim being made against them.
- 9) I have considered the aforesaid contentions and perused the material on record.
- 10) Order 18, Rule 17 C.P.C. enables the Court at any stage to recall any witness who has been examined and put questions to him as it thinks fit. This power can be exercised by the Court suo motu 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 the same should be used in appropriate cases to enable the

Court to clarify any doubts in regard to the evidence led by the parties. However, once a witness is recalled, the Court may at its discretion permit the parties to assist it by putting questions. Thus, primarily it is the Court that is vested with the power to recall a witness under the said provisions and it does not confer any right on the parties.

11) It is to be noted that there is no specific provision in the C.P.C. which enables the parties to re-open the evidence for the purpose of further examination of parties. However, Section 151 C.P.C. provides that nothing in the Code shall be deemed to limit or otherwise of it the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent the abuse of process of the Court.

12) The inherent power under the said provision can be invoked in appropriate cases to reopen the evidence and to recall a witness for further examination or cross-examination. The inherent power of the Court is not affected merely because the power to recall a witness is specifically vested in the Court under Order 18, Rule 17. At the same time, it must be noted that though Section 151 C.P.C. confers discretion on the Court, the power should be exercised sparingly and only to meet the ends of justice. On a consideration of the provision of Order 18, Rule 17 and Section 151 C.P.C. it emerges that a witness can be recalled by the Court to put questions to him to enable it to clarify as to the evidence already recorded and at the same time it may permit the parties to put questions to the witness. Under Section 151 C.P.C. the Court can exercise wider powers to recall a witness at the instance of a party and to permit to examine/cross-examine the witnesses.

13) In the instant case, there is no dispute that application was filed to recall the plaintiff both under Order 18, Rule 17 and also under Section 151 C.P.C. As noticed above, defendants 2 and 3 did not file their written statement but that will not disentitle the defendants 2 and 3 to take part in further proceedings and cross-examine the plaintiff or his witnesses in order to demolish the plaintiff's case. In the instant case, the Court has permitted to recall of the plaintiff as it was satisfied that it was necessary to do so as the plaintiff is seeking huge amount of

Rs.20,00,000/- as damages and that it would not cause any prejudice to both the parties. Thus, I am of the considered view that there is justification for the Court below in exercising its discretion, be it under Order 18, Rule 17 or under Section 151 C.P.C.

14) It is true that the conduct of defendants 2 and 3 is not appreciable. When they suffered an order in I.A.No.4642 of 2006 seeking enlargement of time for filing written statement, they misrepresented to the Court below that they had obtained stay orders from the High Court. They made the said representation on 13-03-2007, when the stay was actually granted on 10-08-2007. In fact, the revision itself was filed on 31-07-2007 and the same was returned and re-submitted again only on 03-08-2007 and on such misrepresentation of fact, the matter was adjourned on a couple of occasions. These facts were in fact noticed by this Court in the C.R.P.No.3519 of 2007 and the request of the defendants 2 and 3 to extend the time for filing written statement was rejected. Thus, the defendants 2 and 3 were not allowed to file the written statement. In my view, the defendants are sufficiently punished and the same conduct should not come in their way at least for cross-examining the plaintiff.

15) The counsel for the petitioner is right in contending that relief which has not been claimed by the defendants 2 and 3 themselves was granted by the Court below. The defendants merely wanted the recall of P.W.1 for cross-examination, where as the Court below in addition to the said prayer has permitted them to adduce evidence on their behalf. The said relief is clearly beyond the prayer of the defendants 2 and 3. Civil Courts are not competent to grant reliefs beyond what has been prayed for. It is already noticed that the defendants 2 and 3 have not filed the written statement and in the absence of their own pleadings it is not permissible for them to lead their own evidence. Though they are entitled to participate in further proceedings without the written statement, their participation would be restricted by several limitations. They will be competent to cross-examine the plaintiff or his witnesses only to demolish the case of the plaintiff. Thus, the impugned order to the extent it has permitted the defendants 2 and 3 to adduce their evidence is not legal and unsustainable.

16) For the foregoing reasons, the order insofar as recalling P.W.1 for cross-examination by defendants 2 and 3 is confirmed; and the order insofar as permitting the said defendants to adduce evidence is set aside.

17) C.R.Ps. are accordingly allowed in part. No costs.

18) In view of the disposal of the C.R.Ps., C.M.P.Nos.4542, 4543 and 4544 of 2010 are dismissed as unnecessary.

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