HIGH COURT OF ANDHRA PRADESH

CIVIL REVISION PETITION No.342 OF 2024

Between:

Dindi Veera Bhadra Rao and another .....Petitioners

AND

Garapati Vimala Rani

.....Respondent

DATE OF JUDGMENT PRONOUNCED: 06.03.2024

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

1. *Whether Reporters of Local newspapers may be allowed to see the Judgments?* — *Yes/No*
2. *Whether the copies of judgment may be marked to Law Reporters/Journals* — *Yes/No*
3. *Whether Your Lordships wish to see the fair copy of the Judgment?* — *Yes/No*

RAVI NATH TILHARI, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

+ CIVIL REVISION PETITION No.342 OF 2024

% 06.03.2024

Between:

Dindi Veera Bhadra Rao and another

....Petitioners

Versus

$ Garapati Vimala Rani

.....Respondents

! Counsel for the Petitioners: Sri P. Srinivasulu

^ Counsel for the respondents: None.

< Gist :

> Head Note:

? Cases Referred:

[1] AIR 2009 SC 1604
2 (1984) 2 SCC 354
3 (2022) 13 SCC 320

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION No.342 OF 2024

JUDGMENT

Heard Sri P. Srinivasulu, learned counsel for the petitioners and perused the material available on record.

2. This civil revision petition under Article 227 of the Constitution of India has been filed challenging the order dated 29.11.2023, passed in I.A.No.412 of 2023 in O.S.No.580 of 2021 on the file of II Additional Junior Civil Judge-cum-II Additional Judicial Magistrate of the First Class, Rajamahendravaram.

3. The plaintiffs filed O.S.No.580 of 2021 for a decree of recovery of the suit amount and award of interest etc., based on three demand promissory notes dated 26.07.2005 with pleadings inter alia that the defendants timely made endorsements, by paying small amount towards repayment of debt, on the back of the promissory notes on 25.07.2008, 25.07.2011, 11.06.2014 and lastly on 06.06.2017.

4. The petitioners are the defendants in the suit.

5. The application I.A.No.412 of 2023 was filed by the plaintiff/respondent to recall P.W.1, to mark the payment

endorsements made by the defendants on the backside of the '3' promissory notes, supported by affidavit pleading inter alia that due to over look the plaintiff's advocate could not mark those endorsements made by the defendants as exhibits.

6. The petitioner/defendants filed objection/counter submitting inter alia that the plaintiffs knew very well which documents were to be marked on her side and as such the evidence could not be reopened and P.W.1 could not be recalled.

7. The learned trial court allowed I.A.No.412 of 2023 vide the impugned order dated 29.11.2023.

8. Pursuant to the order dated 23.02.2024, passed in this petition, the petitioners have filed a memo brining on record, copy of the affidavit in chief and the cross-examination of P.W.1.

9. Learned counsel for the petitioners submits that the endorsement was in the knowledge of the plaintiff and was on record. If that was not marked at the time of evidence of P.W.1, now the I.A. could not be allowed to fill the lacunae in evidence.

10. Learned counsel for the petitioners placed reliance in **Vadiraj Naggappa Vernekar (deceased) by L.Rs) vs. Sharad**

Chand Prabhakar Gogate[1] to contend that the provisions of Order XVIII Rule 17 Code of Civil Procedure, (CPC) are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

11. I have considered the submissions advanced by the learned counsel for the petitioners and perused the material on record.

12. Order XVIII Rule 17 CPC read as under:

> **"17. Court may recall and examine witness:-**
>
> The Court may at any stage of a suit recall any witness who has been examined and may subject to the law of evidence for the time being in force put such question to him as the court thinks fit."

13. In **Vadiraj Naggappa Vernekar** (supra), upon which learned counsel for the petitioners placed reliance, the question for decision was:

> "Whether a witness having been examined by way of affidavit evidence can be recalled for giving further evidence with regard to facts not mentioned in the affidavit."

[1] AIR 2009 SC 1604

14. In **Vadiraj Naggappa Vernekar** (supra), the Hon'ble Apex Court held that the provisions of Order XVIII Rule 17 CPC are not intended to be used to fill up omissions in the evidence of a witness who has already been examined. It was further held that 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 Hon'ble Apex Court further held that the power under Order XVIII Rule 17 CPC is to be sparingly exercised and in appropriate case and not as a general rule. The Hon'ble Apex Court further held that 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. It was held that ultimately it is within the court's discretion, if it deems fit to allow such an application.

15. It is apt to reproduce paras 16 to 17 of **Vadiraj Naggappa Vernekar** (supra) held as under:-

> "16. 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 any 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. 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 CPC 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 CPC.

17. It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC 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 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."

16. In **Vadiraj Naggappa Vernekar** (supra), the evidence which was 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 was not as if certain new facts had been discovered subsequently which were not within the knowledge of the applicant when the affidavit evidence was prepared. There, Sadanand Shet was shown to have been actively involved in the acquisition, but the application under Order XVIII Rule 17 CPC was filed only after examination or cross examination of such witness, when certain lapses in his evidence came to be noticed under such circumstances, it was held that the case for recall of the witness was not made out.

17. In the present case, the evidence of P.W.1, as annexed by the petitioner along with the memo, shows that the plaintiff deposed in para 2 of the chief affidavit as under:

> ".....The defendants made some payments for renewal of the '3' promissory notes of the above on the back side of

> the promissory notes time to time, but they failed in payments even after several times demanded by me the defendants not repay the entire debt amounts……"

In Para 4 of the Chief Affidavit the P.W.1 further deposed as under:

> "……I submit that I along with filed '3' original promissory notes dated 26.07.2005 they may be marked as exhibits as Ex.A.1 to A.3 and the legal notices be marked as Ex.A.4 on my side documentary evidence….."

18. In the considered view of this court, it is not a case where the witness did not depose about the facts in his knowledge, at the time of filing of the chief affidavit. It was so deposed. The original '3' promissory notes were also marked as Exhibits A.1 to A.3. However, the endorsements on the back side of the '3' promissory notes could not be marked. So, it is not a case of filling up of lacuna by seeking to depose some thing which was not deposed in the affidavit.

19. The evidence i.e marking the backside of the three promissory notes which had already been marked as Exhibits A.1 to A.3, has a bearing on the ultimate decision of the suit. The plaintiffs' case is of extension of time by the defendants while making part payment, on different dates and based thereon the case is that the suit was within the period of

limitation. Whereas, the case of the defendants in their written statement inter alia is that the suit debt, if any is barred by limitation. Without observing anything on the merits of the aforesaid pleadings, this court is of the view that the evidence on re-examination of P.W.1, on recall to the limited extent as allowed, cannot be said to have no bearing on the ultimate decision in the suit. So, if the trial court in its wisdom considered it appropriate and fit to allow the plaintiffs' application for recall of P.W.1 to mark the back side of three original promissory notes Exs.A.1 to A.3 no fault can be found so as to call for any interference, in the exercise of discretion exercised by the trial court in advancement of justice.

20. In the case of **Rayapaneni Umadevi vs. Bheemineni Vamsi Kiran** in C.R.P.Nos.2627 & 2628 of 2019 of this Court decided on 06.12.2019, on which also learned counsel for the petitioner placed reliance, it was held that it is desirable that recording of evidence should be continuous and followed by argument and decision thereon within a reasonable time. It was observed that the court should constantly endeavour to follow such a time schedule. If the same was not followed, the purpose of amending several provisions in the Code would get defeated. The applications for reopening and recalling are

interim measures, and could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered.

21. There is no dispute on the proposition of law as in **Rayapaneni Umadevi** (supra). However, in the said case, the plaintiff had filed many applications before the trial court one after the other to drag on the proceedings by misusing the provisions of law which the court could not encourage. In that case, the suit had been reserved for judgment and the parties had nothing to do with the matter except pronouncing judgment, it was held that the question for recalling the witness did not arise. The said judgment is distinguishable on facts.

22. The learned trial court has recorded in its order that the on hand payment endorsements are already in the record and there were every possibility to forget in marking such payment that is human error. The plaintiff did not seek to adduce the additional evidence, but wanted to mark only such endorsements. The original promissory notes are already on record and exhibited as Ex.A.1 to A.3. The trial court found the reasons assigned by the plaintiff to be proper and genuine. The trial court observed that by allowing the application, no prejudice would be caused to the defendants. The trial court

also observed that though the matter was coming for arguments of respondents/defendants, but since the petitioner had shown sufficient reasons for non exhibiting of payment endorsement, the opportunity must be given to the plaintiff, irrespective of the stage of the suit. This court is of the view that the learned trial court has allowed the application for the well assigned reasons, in the judicious exercise of discretion vested in it under Order XVIII Rule 17 CPC.

23. In **M.M. Amonkar and others vs. S.A. Johari[2],** one of the grounds for rejection of the application by the trial court was that the courts power to recall and examine any witness at any stage of the suit under Order XVIII Rule 17 CPC was to be exercised in exceptional circumstances and in that case no exceptional circumstance had been made out, inasmuch as the documents sought to be adduced by recall of witness would have become available before the applicant had started the witness's cross examination. The Hon'ble Apex Court held that may be in the exercise of its discretion another court might have taken a different view and might have allowed the application, but unless the reasons given by the learned trial judge can be said to be moon-shine, flimsy or irrational, the rejection of the

[2] (1984) 2 SCC 354

application could not be dubbed as suggestive of non judicial approach.

24. It is apt to refer relevant part from para 10 of **M.M. Amonkar** (supra) as under:

> ".....but the learned trial Judge passed a lengthy order giving three reasons for the rejection of the application; (c) that the Court's power to recall and examine any witness at any stage of the suit under Order XVIII Rule 17 of C.P.C., on which strong reliance was placed by Counsel for the respondent-plaintiff was to be exercised in exceptional circumstances and no exceptional circumstance had been made out by the respondent-plaintiff inasmuch as these documents would have become available to him before he started the witness's cross-examination. **May be in the exercise of its discretion another Court might have taken a different view and allowed the application. But unless the reasons given by the learned trial Judge could be said to be moon-shine, flimsy or irrational the rejection of the application cannot be dubbed as suggestive of non-judicial approach or bias or partiality on his part.** It is also possible that the reasons for giving a ruling on a point or for rejecting an application may be wrong or disclose a non- judicious exercise of discretion and open to correction in appeal, but no motive of a non-judicial approach or bias or partiality could be attributed unless, as we have said above, the reasons given are moon shine or so flimsy or irrational that they are unreal. Considered dispassionately, such a thing can never be said about the reasons given by the trial Judge for rejecting the application.....".

25. In **State of Madhya Pradesh vs. R.D. Sharma and another[3],** the Hon'ble Apex Court held that it is well-settled legal position that the power under Article 227 of the Constitution of India is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. In that case, it was observed that the Tribunal had not committed any jurisdictional error, nor any failure of justice had occasioned and hence the interference of the High Court in the order passed by the Tribunal was absolutely unwarranted.

26. This Court finds that the trial court has acted within its jurisdiction and in the exercise of it discretionary power under Order XVIII Rule 17 CPC, judiciously, in advancement of justice. Such a course does not cause any prejudice to the defendant-petitioners as they may also have the right of further cross-examination of P.W.1 which has been recalled.

27. I do not find any illegality in the impugned order so as to invoke the jurisdiction under Article 227 of the Constitution of India to interfere with the impugned order which requires no interference.

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[3] (2022) 13 SCC 320

28. The civil revision petition is dismissed. No order as to costs.

Consequently, the miscellaneous petitions, if any, pending in the petition shall stand closed.

RAVI NATH TILHARI, J

Date: 06.03.2024

Note:

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THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

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Date:06.03.2024

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