

(2023) 08 KAR CK 0014

In the Karnataka High Court

Case No : Writ Petition No. 17243 Of 2023 (GM-CPC)

**M/S. Royal Star Holdings & Others Vs V. Anupama & Others ??NO.38,
4TH CROSS, 4TH BLOCK RAMAKRISHNA NAGAR, NANDINI LAYOUT,
BANGALORE-560096**

Date of Decision : 14-08-2023

Acts Referred:

Code Of Civil Procedure Code, 1908 — Section 151
Code Of Civil Procedure Code, 1908 — Order 18 Rule 17

Citation : (2023) 08 KAR CK 0014

Hon'ble Judges : S.G. Pandit, J

Bench : Single Bench

Advocate : Vikhar Ahmed B, V B Shiva Kumar

Final Decision : Disposed Of

Judgement

S.G. Pandit, J

1. Petitioners/defendants in O.S.No.6048/2017 on the file of XXVII Additional City Civil and Sessions Judge are before this Court questioning the correctness of the order dated 21.07.2023 by which the petitioners request to recall and re-open for further cross-examination of PW-1 under IA.Nos 13 and 14 are rejected.

2. Heard the learned counsel Sri.Vikhar Ahmed B. for the petitioners and learned counsel Sri. V.B.Shiva Kumar for the respondents/plaintiffs and perused writ petition papers.

3. Learned counsel for petitioners would submit that the suit by the respondents is for recovery of an amount of Rs.18,28,109/- together with interest from the petitioners/defendants. Petitioners partly cross-examined PW-1 on 29.03.2022 and the matter was posted to 19.04.2022 for further cross-examination of PW-1. On 19.04.2022 the petitioners sought time to cross examination of PW-1 and the matter stood posted to 26.05.2022. On the said date, as the petitioners sought time for further cross-examination of PW-1, the trial Court closed the stage and posted the suit for defendants evidence. The petitioners/defendants filed

IA.No.13 under Section 151 of CPC and IA.No.14 under Order 18 Rule 17 read with Section 151 of CPC to reopen and seeking permission to further cross examination of PW-1. Learned counsel would submit that the trial Court committed an error in rejecting the IAs. Learned counsel would submit that, IA for recall was filed on 08.07.2022 and under impugned order dated 21.07.2023, IAs are rejected. He submits that the plaintiff has produced more than 200 Exhibits and the petitioners needed some time to go through exhibits and cross examine PW-1. Learned counsel would submit that the petitioners pray for an opportunity to cross examine PW-1 and learned counsel Sri. Vikhar AHmed B. for the petitioners undertakes to complete cross examination within 2 dates.

4. Learned counsel Sri.V.B.Shivkumar for respondents submits that petitioners were provided with sufficient opportunity to cross examine PW-1. The suit was posted for Cross-Examination of PW-1 on the first occasion on 15.06.2018 and till 26.05.2022, the day on which the further cross examination of PW-1 was closed, the petitioners had taken more than 21 adjournments for cross examination of PW-1. He submits that on perusal of order sheet, would make it clear that the petitioners are not entitled for any opportunity, since sufficient opportunity is provided. Learned counsel further submits that the suit was posted for defendants evidence on 10 occasion, but the defendants have failed to produce their evidence. In the above circumstances, he prays for dismissal of the Writ Petition.

5. Having heard the learned counsel for the parties and on perusal of the writ petition papers, I am of the view that Trial Court is justified in rejecting the applications IA.Nos. 13 and 14 filed to reopen the stage and seeking permission to cross examination of PW-1, further. However, learned counsel for petitioners is seeking for an opportunity to cross examine PW-1 further, and he has also undertaken on behalf of the petitioners that within 2 dates the petitioners would complete the cross examination of PW-1.

6. No litigant should go out of the Court with an impression that he has not been provided sufficient opportunity to defend himself in the suit.

7. In the interest of justice, I am of the view that an opportunity is to be provided to the petitioners/defendants to further cross examination of PW-1 on payment of cost of Rs.25,000/- to the State Legal Services Authority and Rs.5,000/- to the respondents/plaintiffs. It is submitted that the suit is listed on 16.08.2023 and learned counsel Sri. V.B.Shivakumar submits that he would keep PW.1 present on 16.08.2023. Hence the following:

ORDER

1. The impugned order dated 21.07.2023 on IA.Nos.13 and 14 in OS.No.1604/2017 is modified to provide an opportunity to the petitioners for further cross examination of PW-1 on 16.08.2023 and to complete cross examination within two dates as under taken by the learned counsel for the petitioners.

2. The petitioners shall complete the cross examination within 2 dates. The cross examination shall be permitted on producing receipt for having paid Rs.25,000/- to the State Legal Services Authority as cost and also on paying Rs.5,000/- to the respondents/plaintiffs.

3. If the petitioners fail to produce the receipt for having paid the cost to the State Legal Services Authority as well as to the respondents/ plaintiffs they would be forfeit their right to cross examine PW-1 on 16.08.2023.

With the above, Writ Petition stands disposed off.