

(2016) 10 AP CK 0030

In the Andhra Pradesh High Court

Case No : Civil Revision Petition Nos. 2523 and 3744 of 2016

Sudini Narsimha Reddy

APPELLANT

Vs

S. Sarojini

RESPONDENT

Date of Decision : 14-10-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 10, Section 32

Citation : (2017) 1 AndhLD 250 : (2017) 1 HLT 91

Hon'ble Judges : Mr. Sanjay Kumar, J.

Bench : Single Bench

Advocate : Mr. Dida Vijaya Kumar, Advocate, for the Respondent No. 2; Mr. K. Pradeep Reddy, Advocate, for the Respondent No. 3; Mr. S.A.V. Sai Kumar, Advocate, for the Petitioner; Mr. J. Venudhar Reddy, Advocate, for the Respondent No. 1; Sri Mohd. Zaheeruddin, Advo

Final Decision : Disposed Off

Judgement

Mr. Sanjay Kumar, J. - These two revisions arise out of O.S. No.5 51 of 2006 on the file of the learned Principal District Judge, Ranga Reddy District at L.B. Nagar. The petitioner in both revisions is defendant 5 in the suit. CRP No. 2523 of 2016 was filed by him aggrieved by the order dated 28.04.2016 passed in the said suit, taking note of the fact that the petitioner-defendant 5 was not ready and adjourning the matter to 03.06.2016 on payment of further costs of Rs.3,000/- to the District Legal Services Authority. It appears that the trial Court thereafter passed an order on 03.06.2016 closing the evidence of the petitioner defendant 5, taking note of the fact that costs had not been paid by him as directed by it and posting the suit for arguments on 10.06.2016. Aggrieved by this order, he filed CRP No. 3744 of 2016.

2. On 10.06.2016, while ordering notice before admission in CRP No. 2523 of 2016, this Court granted interim stay of further proceedings in the suit as the trial Court had closed the evidence of the petitioner-defendant 5 and had posted the matter for arguments.

3. Notice having been served, Sri J. Venudhar Reddy, learned counsel, entered appearance for respondent 1-plaintiff in both the revisions, Sri Mohd. Zaheeruddin, learned counsel, entered appearance for respondents 4 and 5-defendants 3 and 4 in both cases, Sri Dida Vijaya Kumar, learned counsel, entered appearance for respondent 2-defendant 1 in CRP No. 3744 of 2016 and Sri K.Pradeep Reddy, learned counsel, entered appearance for respondent 3-defendant 2.

4. Heard learned counsel for the parties.

5. Sri S.A.V. Sai Kumar, learned counsel for the petitioner defendant 5, would state that the suit was adjourned to 28.05.2016 for further evidence of his client. On the said date, the petitioner defendant 5 wanted to examine his maternal uncle but he did not turn up, despite service of summons and his appearance earlier. Learned counsel would state that on the one occasion that his maternal uncle appeared earlier before the trial Court, he sought an adjournment on the ground that he would try to settle the dispute between the parties as he was a family elder. According to the learned counsel, the trial Court adjourned the matter by imposing costs of Rs. 1,000/- payable to the District Legal Services Authority but on the adjourned date, as his maternal uncle again did not turn up, the trial Court imposed further costs of Rs.3,000/-, payable to the District Legal Services Authority.

6. Sri Dida Vijaya Kumar, learned counsel, would however contest the claim of the petitioner-defendant 5. He would state that the petitioner-defendant 5's evidence as D.W. 3 concluded on 01.02.2016 and the matter was adjourned to 05.02.2016 for his further evidence. On the said day, he reported not ready and the matter was again adjourned to 16.02.2016 on payment of Rs.500/- costs to the District Legal Services Authority. Again, the petitioner-defendant 5 reported not ready and the matter was adjourned to 19.02.2016 on payment of further costs of Rs.1,000/- to the District Legal Services Authority. On the said day, the petition filed by the petitioner-defendant 5 was allowed and witness summons to his maternal uncle was permitted to be served through him. The matter was adjourned to 02.03.2016. On the said day, the witness summons was returned unserved and fresh summons was again handed over to be delivered to the witness and the matter was adjourned to 09.03.2016. The same situation continued on the said day and again fresh summons was issued and the matter was adjourned to 15.03.2016. On that day, as the petitioner-defendant 5 was called absent, his evidence was closed and the matter was adjourned to 18.03.2016 for recording the evidence of defendant 2. However, upon an application filed by the petitioner-defendant 5 for recalling the order dated 15.03.2016, the suit was reopened for his further evidence and the proposed witness, the maternal uncle of the petitioner-defendant 5, was also present. However, a memo was filed before the trial Court reporting that the summoned witness would make efforts to settle the matter between the parties and an adjournment was sought on that ground. The matter was accordingly adjourned

to 07.04.2016. On the said day, as the presiding officer was on leave, the case was adjourned to 19.04.2016. On 19.04.2016, the petitioner-defendant 5 reported not ready and the matter was adjourned to 28.04.2016 on payment of costs of Rs. 1,000/- to the District Legal Services Authority. On 28.04.2016, the petitioner-defendant 5 paid the costs but was again not ready and the matter was adjourned to 03.06.2016 on further payment of Rs.3,000/- costs to the District Legal Services Authority. This, according to the learned counsel, was the sequence of events which justified the imposition of exemplary costs by the trial Court.

7. Sri S.A.V. Sai Kumar, learned counsel, would however assert that the case was adjourned on the ground that the summoned witness, the maternal uncle of the petitioner-defendant 5, failed to appear on the adjourned dates, after his first appearance, and that this was not a lapse attributable to his client, whereby he could have been mulcted with exorbitant costs and penalized.

8. The suit, O.S. No. 551 of 2006, on the file of the learned Principal District Judge, Ranga Reddy District, was filed for partition of the suit schedule properties and for separate possession. The parties to the suit are members of a joint family. The petitioner-defendant 5 wanted to examine his maternal uncle as a witness but upon service of summons, the said witness appeared and sought an adjournment, without adducing evidence, on the ground that he would try to settle the dispute, being a family elder. He thereafter failed to appear on the adjourned dates despite there being no settlement of the suit dispute.

9. The docket proceedings placed on record by Sri Dida Vijaya Kumar, learned counsel, indicate that after reopening of the suit on 29.03.2016 for further evidence of the petitioner-defendant 5, the matter was adjourned to 07.04.2016, 19.04.2016, 28.04.2016 and lastly, to 03.06.2016, for the purpose - "summons to witness". It is therefore clear that the adjournments were for the appearance of the witness of the petitioner-defendant 5, his maternal uncle. It is also not in dispute that summons was served upon the witness and he also appeared before the Court on one occasion.

10. If the summoned witness failed to appear thereafter for adducing evidence, it is not as if the trial Court is powerless. Section 32 CPC and Order 16, Rule 10 CPC provide to the effect that where a person, to whom a summons has been issued to give evidence, fails to attend in compliance with such summons, the Court may issue a proclamation requiring him to attend to give evidence at a time and place as named therein, failing which the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may also make an order for attachment of his property to such amount as it thinks fit, not exceeding the amount of costs of attachment and of any fine which may be imposed under Order 16, Rule 12 CPC.

11. This being the legal position, the trial Court ought not to have punished the petitioner-defendant 5 for the failure of his witness to comply with the summons

on the adjourned dates. Imposition of exorbitant costs on the party for the failure of the summoned witness is not justified in such a scenario. Reference in this regard may be made to *Ashok Kumar Mittal v. Ram Kumar Gupta* (2009) 2 SCC 656, wherein the Supreme Court observed that Courts should not exceed or overlook the limitations placed by the CPC with reference to costs in civil litigation and that no litigant should be made to feel that heavy costs are being levied to create a corpus for the Legal Services Authority. Again, in *Satyapal Singh v. Union Of India* AIR 2010 SC 1138, the Supreme Court observed that ordinarily costs would be made payable to the Legal Services Authority before the other side is served or represented but once the other side is represented, costs levied by reason of any attempt by a party to delay the proceedings should normally be for the benefit of the other party who has suffered due to such conduct. It was further held that only where both parties were at fault, costs may be ordered to be paid to the Legal Services Authority and in any event, power to levy exemplary costs should be used sparingly to advance justice and should not be threatening or oppressive.

12. Further, as pointed out by the Punjab and Haryana High Court in *Piara Singh v. Smt. Vidhya Wati* (2001) 129 (3) PLR 243, it would not be proper for the trial Court to close the evidence of the party concerned for the failure of the witness summoned to appear on his behalf. It was pointed out that in such a situation, the Court must take recourse to the provisions of Order 16, Rule 10 CPC for compelling the attendance of such recalcitrant witnesses. Similar was the view taken earlier in *Suresh Nath Modi v. Lr's of Jorawarma* AIR 1999 Rajasthan 357 and *M/s.Sohan Singh And Co v. Mohammad Aishak Tyagi* AIR 1973 Himachal Pradesh 39.

13. In the light of the afore stated settled legal position, the practise adopted by the trial Court of penalizing the petitioner-defendant 5 for the failure of his summoned witness and directing payment of high costs time and again to the District Legal Services Authority cannot be countenanced. To add insult to injury, the trial Court closed his evidence for the failure of his summoned witness and owing to nonpayment of the high costs imposed upon him in that regard.

14. Both the civil revision petitions are accordingly allowed setting aside the orders dated 28.04.2016 and 03.06.2016 passed by the learned Principal District Judge, Ranga Reddy District, in O.S. No. 551 of 2006. The trial Court shall reopen the evidence of the petitioner-defendant 5 and take steps to compel the attendance of the summoned witness in accordance with law and proceed in the matter. Interim order dated 10.06.2016 passed by this Court shall stand vacated. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.