

**IN THE COURT OF X ADDITIONAL DISTRICT AND SESSIONS JUDGE,
RANGA REDDY DISTRICT AT L.B.NAGAR.**Monday, this the 14th day of October, 2024**PRESENT: Smt.T.Jaya Lakshmi**
X Additional District & Sessions Judge
R.R.District at L.B.Nagar**I.A.NO.631 OF 2024**
IN
O.S.NO.824 OF 2012**BETWEEN:**

1. The Government of Telangana.
2. The District Collector, Ranga Reddy District.
3. The Revenue Divisional Officer, Ibhrahimpatnam Division.
4. The Tahsildar, Hayathnagar Mandal, R.R.District.

...Petitioners/Defendants

AND

Dr. S.Ashok Shetty & Others

...Respondent/Plaintiff

This petition having come before me for final hearing in the presence of **M.Raj Kumar, Advocate for the petitioners/Defendant nos.3 to 5** and **Divya Rai, Advocates for the respondent/plaintiff**, upon perusing the entire material on record, upon hearing the arguments on either side and after having stood over for consideration, till this day, this Court made the following:

:: ORDER ::

1. This is a petition filed by the petitioners under Order XVIII Rule 17 of Code of Civil Procedure, praying the Court to recall the PW1 and PW2 and set aside the orders dated 13.03.2014 and 26.07.2024 for the purpose of cross examination of PW1 and PW2 on behalf of the petitioners/defendants for proper adjudication of the matter in the interest of justice.

2. The brief averments of the affidavit accompanying the petition are that the respondents/plaintiffs initially filed the suit for declaration and consequential

injunction against the defendants and the same is coming for cross examination of PW2 and earlier the chief affidavit of PW1 was filed and cross examination of PW1 was closed on 13.03.2024 and subsequently PW2 was examined in chief and cross examination of PW2 was closed on 26.07.2024 and the matter was posted for defendants evidence and the term of the earlier Government Pleader was completed and at present the affidavit giver was appointed as Government Pleader and the files were handed over to him recently and after going through the records, it came to the knowledge that the PW1 and PW2 were not cross examined, as such it is most crucial and essential the witnesses to be cross examined for the purpose of proper adjudication of the matter and the Hon'ble Court has got wide discretionary powers to recall PW1 and PW2 and set aside the orders dated 13.03.2024 and 26.07.2024 for the purpose of cross examination of PW1 and PW2 for proper adjudication of the matter and hence the petition.

3. The respondents filed the counter by contending that PW1 was cross examined at length, but the petitioner failed to cross examine the PW1 even though much opportunity was given by this Hon'ble Court and at last it was closed on 26.07.2024 and it is coming for the evidence of defendants from 06.08.2024 and the PW1 is a reputed medical practitioner and he involved in day to day surgeons and with great difficulty he has attended to submit himself for cross examination and the petitioner having utilize the opportunity for cross examination and now with an intention to fill up the lacunas cannot be permitted in view of the ratio laid down by the Hon'ble Supreme Court and hence the

witnesses cannot be recalled as a matter of course and moreover the dates were silent when did the present GP took up the files and without assigning any cogent reasons, this petition was filed without reopening the evidence of plaintiff side and which amounts to abuse of process of law and as per provision of Order XVIII Rule 17 CPC for clarifying any doubt the Court has either sue-motto or request of any party recall the witness at any stage, but not to invoke the provision to fill up the omissions in the evidence already lead by witness and hence the petition may be dismissed.

4. Heard arguments.

5. Now the point for determination is:

Whether the petitioner is entitled to recall the PW1 and PW2 for the purpose of cross examination?

6. **POINT:** As per the case of the petitioner, recently the Government Pleader took up the charge and the files were handed over recently and so that he could not cross examine the PW1 and PW2 and the orders passed on 13.03.2024 and 26.07.2024 may be set aside by recalling the PW1 and PW2. The respondents vehemently opposed the petition.

7. On perusal of record it was found that on 13.03.2024 PW1 was present and further cross examined and it was posted for further evidence of plaintiff. Therefore, there is no question of closing the cross examination of PW1 on 13.03.2024 does not arise. With regard to the set aside the orders on 26.07.2024 the PW2 chief evidence was confirmed on 11.06.2024 and it was

posted for cross examination of PW2 on 10.07.2024 and thereafter it was adjourned to 26.07.2024 and on that date PW2 was present and the learned G.P. failed to cross examine the witness and so that the cross examination was treated as nil. As per the version of the petitioner due to non handing over the files by his predecessor, the present G.P. could not cross examine the witness. In the middle there is only one adjournment was given. The opportunity for cross examination of PW2 was not availed as the files were not in possession of the present G.P. and so that this petition is filed. The learned counsel for the plaintiff vehemently opposed the petition by arguing that the Order XVIII Rule 17 CPC not to fill up the lacunas and it is not a casual manner and in support of his arguments, filed the following case law,

(1) Vadiraj Naggapa Vernekar (D) Through LRs Vs. Sharad Chand Prabhakar Gogate, reported in AIR 2009 SC 1604. This is a suit filed by Vadiraj Naggapa Vernekar and Smt. Mainabai Ranade for declaration that the letters of administration obtained by one Sharad Chand Prabhakar Gogate on 05.11.1998 in respect of the estate of Dr.Sudha Gogate was not binding on the plaintiffs and after filing of the chief affidavit and a petition was filed urging that certain facts which were necessary for proper adjudication of the suit had inadvertently been left in the affidavit affirmed by Sadanand Shet and therefore to recall him for further chief examination and the said petition was dismissed by holding that witness could not be recalled to fill up the lacunas in his chief examination affidavit and on that preferred the appeal and the appeal was dismissed by holding that this rule is unable the court while trying a suit to clarify

any doubt which it may have with regard to the evidence lead by the parties.

(2) **Ram Rati Vs. Mange Ram and Others, reported in AIR 2016 SC 1343.** There are two suits filed by the parties and those suits were consolidated and prior to the consolidation, one of the witness was examined and no opportunity was given to the defendant no.5 in that suit and the trial court allowed the application and the same order was confirmed by the Hon'ble High Court and then the matter was put before the Hon'ble Apex Court. The Hon'ble Apex Court held that Order XVIII Rule 17 r/w 151 CPC is very clear to recall a witness at the instance of the other party for further elaboration on the left out points is not permissible in law.

(3) **Kasimhanti Venkata Srinivasa Srikrishna Geethanand Vs. Kandukuri Butchi Mallikeswara Rao, reported in 2018 (3) ALD 86.** There were two suits filed by the wife and husband against the same defendant for recovery of the money. After the evidence of PW1, the plaintiff evidence was closed, the petitioner filed IAs for reopening and recalling of PW1 in both suits and these applications were dismissed by the trial court on the ground that the petitioner has not indicated the aspects on which he proposes for further cross examine the respondents/plaintiffs and unsuccessful defendant filed these revision petitions. The Hon'ble Court confirmed the orders of trial court by holding that the party has to necessarily satisfy the court that the aspects on which he proposes to cross examine or material for proper and effectual adjudication of the case and if an opportunity is not given to him for further cross examination, it would result in failure of justice.

(4) **Battini Srinivas Rao Vs. Konuri Venkata Chalapathi Rao and Others, reported in 2023 (3) CCC 391.** The plaintiff filed the suit to cancel the registered sale deed executed in favour of the first defendant and in that suit an application was filed to recall the DW1 and DW3 for further cross examination and the trial court dismissed the said application on the ground that the petitioner filed the application to fill up the lacunas and it would cause great prejudice to the first respondent and there is no justifiable cause to reopen and recall the witnesses after closure on the defendant side. Aggrieved by that order the revision petition was preferred and the Hon'ble High Court also confirmed the same.

8. Here in the case in hand, there is no adverse orders on 13.03.2024 against the petitioner. On 13.03.2024 PW1 was cross examined at length and after that only re-examination was also closed. Therefore, setting aside the orders on 13.03.2024 by recalling of PW1 does not arise. Then coming to the orders passed on 26.07.2024 the cross examination of PW2 is treated as nil and prior to that one adjournment was given on 10.07.2024 for cross of PW2. PW2 was not at all cross examined and therefore, there is no question of fill up the lacunas of the respondent side does not arise. The petitioner stated that the present G.P. could not have files and so that he could not cross examine the PW1 and PW2. Itself shows that the petitioner was not aware about the cross examination of PW1. In view of the provision of law under Order XVIII Rule 17 CPC and also in view of the ratios laid under the above citations that the petitioner is not filed this petition to fill up the lacunas and moreover the cross

examination of PW2 is necessary for proper adjudication of the case and therefore the petition has to be allowed partly.

Hence, this point is answered accordingly.

9. **IN THE RESULT**, the petition is partly dismissed i.e. for cross examination of PW1 by the defendants and allowed partly i.e. for cross examination of PW2 by the defendants. No costs.

(Typed to my dictation, after correction, pronounced by me in the open Court, on this the 14th day of October, 2024).

-Sd/XXXXXXX

**X ADDITIONAL DISTRICT & SESSION JUDGE
R.R.DISTRICT AT L.B.NAGAR**

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR PETITIONER:

None

FOR RESPONDENTS:

None

EXHIBITS MARKED

FOR PETITIONER:

- NIL -

FOR RESPONDENTS:

- NIL -

-Sd/XXXXXXX

**X ADDITIONAL DISTRICT & SESSION JUDGE
R.R.DISTRICT AT L.B.NAGAR**