

**HON'BLE SRI JUSTICE NINALA JAYASURYA****CIVIL REVISION PETITION Nos.92 and 93 of 2020****COMMON ORDER:**

The revision petitioners, who are the plaintiffs in O.S.No.03 of 2005 on the file of the Court of Principal Senior Civil Judge, Chittoor, aggrieved by the orders dated 05.12.2019 passed in I.A.Nos.477 and 478 of 2019 filed in the said suit, preferred the present Civil Revision Petitions.

In the aforesaid suit, the revision petitioners/plaintiffs filed I.A.No.477 of 2019 under Section 151 of Code of Civil Procedure [for short, 'CPC'] seeking to reopen the suit for entertaining the other application I.A.No.478 of 2019 filed under Order XVIII, Rule 3-A of CPC, seeking permission to examine the first petitioner/first plaintiff, after the evidence of P.W.1, who is her husband. In support of the said applications, the first revision petitioner/first plaintiff filed affidavit, *inter alia*, stating that her husband was examined as P.W.1 in the suit; after his examination I.A.No.3 of 2012 was filed by her to examine her on commission and that the said application was dismissed on 11.07.2012, however, holding that she can be examined in the Court. It is further stated in the said affidavit that after disposal of the said application, time was sought for getting herself examined and some more witnesses, but the Court had closed the evidence on their side and further, as the contesting defendants have filed their chief examination affidavits, she could not file application to reopen their side of evidence. It is also stated that an application was filed thereafter to reopen plaintiffs' side evidence and to examine her along with other witnesses, but the Court was pleased to dismiss the same on merits and aggrieved by the same, a revision in C.R.P.No.2369 of 2019 was preferred before this Court

and the same was dismissed on 28.09.2019. The first petitioner also pleaded that no permission was obtained on the earlier occasion under Order XVIII, Rule 3-A of CPC under the impression that examination of her husband would amount to examination of a party and it is only out of good faith. She further stated that it is necessary to adduce her evidence in support of her case and CRP No.2369 of 2019 was dismissed on the sole ground that no petition was filed under Order XVIII, Rule 3-A of CPC. Therefore, they filed the present applications under the said provision of law.

The contesting respondents filed counters in both the applications, *inter alia*, stating that applications for similar relief have already been dismissed in I.A.No.1190 of 2011, I.A.No.03 of 2012 and I.A.No.343 of 2019. It is further stated that when the husband of the first petitioner/first plaintiff was examined as P.W.1, an objection was taken that plaintiffs are to be examined first and it was represented that plaintiffs are not going to be examined and that the husband of the first petitioner/first plaintiff is competent to speak on behalf of his wife. It is also stated that application in I.A.No.03 of 2012 was dismissed and the same has attained finality as no revision was filed against the orders passed in the said I.A. and further after examining the husband of the first petitioner/first plaintiff as P.W.1, the evidence on plaintiffs' side was closed on 31.08.2012 after several adjournments. By raising several contentions, the applications were also opposed on the ground that there is a delay of seven years after the closure of the evidence on plaintiffs' side and 15 years from the date of the suit.

The trial Court after considering the rival contentions, dismissed the above referred I.As and against the said orders, the petitioners/plaintiffs filed the above two revision petitions.

Heard Sri O.Udaya Kumar, learned counsel for the revision petitioners, and Sri V.S.R. Anjaneyulu, learned counsel for the respondents. Perused the orders and the material filed in support of the relief sought for in the said I.As as well as the present C.R.Ps.

Learned counsel for the revision petitioners submits, *inter alia*, that the evidence of the first petitioner is very crucial and that the trial Court failed to exercise the discretionary powers vested in it in a proper perspective to render substantial justice and failed to consider that sufficient reasons exist for seeking permission under Order XVIII, Rule 3-A of CPC and permission ought to have been granted in the facts and circumstances of the case. He further argued that because of the proceedings initiated by the respondents/defendants, the suit was pending and after dismissal of C.R.P.No.2075 of 2014 and C.R.P.No.2369 of 2019, the above mentioned applications have been preferred and the Trial Court grossly erred in dismissing the applications on untenable grounds. He further submits that by mere examination of the first petitioner/first plaintiff, the respondents/ defendants will in no way be prejudiced as they would have an opportunity to cross-examine her.

On the other hand, learned counsel for the respondents/defendants submits that the evidence was closed long back and at the stage of arguments, the petitioners filed the present applications only with a view to fill up the lacunae in the plaintiffs' evidence. He further submitted that the

first petitioner/first plaintiff, having examined her husband as P.W.1 on the ground that he is competent to speak about the facts and having obtained no permission at the earliest point of time, is not entitled to seek permission under Order XVIII, Rule 3-A of CPC that too after suffering adverse orders in the applications filed on the earlier occasion seeking the similar reliefs. While reiterating the pleas taken in the elaborate counter filed in I.A.No.478 of 2019, the learned counsel submits that the order of the trial Court is legal and valid and prays for dismissal of the present CRPs.

On consideration of the various contentions urged on behalf of the respective parties, the main issue falling for consideration by this Court is *whether the trial Court committed any error in not granting permission under Order XVIII, Rule 3-A of CPC, though it can be granted at any stage, and if so, whether it can be granted in a routine manner without due regard to the facts and circumstances of the case?*

In the present case, as is evident from the facts borne out by record, the first petitioner/first plaintiff filed an application in I.A.No.03 of 2012 seeking her examination on commission and the same was dismissed as long back as on 11.07.2012 and plaintiffs' side evidence was closed on 31.08.2012. Nothing prevented the first petitioner/first plaintiff to take steps for reopening the evidence and filing an application under Order XVIII, Rule 3-A of CPC immediately thereafter. However, at the stage of arguments, an application in I.A.No.343 of 2019 was filed to reopen the evidence on behalf of the plaintiffs for letting further evidence and the said application was dismissed. Aggrieved by the same, C.R.P.No.2369 of 2019 was preferred and the said CRP was also dismissed by this Court *vide* orders dated 28.09.2019. Obviously, in view of the observations made by

this Court, the petitioners filed the present application seeking to reopen the case. The reasoning of the petitioners, as set out in the affidavit filed in support of the application, in this regard are not appreciable. As noticed above, plaintiffs' side evidence was closed on 31.08.2012. It may be appropriate to mention here that while dismissing I.A.No.03 of 2012, by order dated 11.07.2012, the trial Court specifically held that the first petitioner/first plaintiff can examine herself by entering into witness box. Thereafter, plaintiffs' side evidence was closed on 31.08.2012. If the first petitioner/first plaintiff really wanted to examine herself, but was denied her right of examination, she should have taken recourse to law and initiated steps for reopening of the matter at that time itself, but no such steps were taken.

In fact, in the counter filed in I.A.No.03 of 2012 a specific contention was raised and the same reads as follows:-

"As a matter of fact the husband of 1<sup>st</sup> plaintiff was examined as PW-1 and an objection was taken by then to examine him, unless plaintiffs are examined first. At that time it was represented that the plaintiffs are not going to be examined, and that husband is competent to speak on behalf of his wife under Sec.120 of Evidence Act and plaintiffs proceeded to examine PW-1....."

Having examined her husband as P.W.1 on the premise that he is competent to speak about the facts of the suit, the first petitioner cannot approbate and reprobate and guilty of her own conduct. Therefore, the present attempt on the part of the first petitioner/first plaintiff is not permissible.

At this juncture, it is apt to refer to the Judgment of this Court in **Batchu Jagadish Kumar v. Mogili Venkataswamy (died) & Others**<sup>1</sup> relied on by the trial Court, wherein it was held that:

“Though fair amount of discretion is vested in the Courts to consider such requests, unless strong reasons are pleaded and the Court is satisfied with such reasons, it is not desirable to re-open the evidence, basing on such requests.”

As noticed in the present case, the first petitioner/first plaintiff, who is well aware of the orders passed in I.A.No.03 of 2012 dated 11.07.2012, despite specific contention raised in the counter filed in the said I.A. that no permission was taken from the Court to examine the first plaintiff at later point of time and at the time of examination of P.W.1, an objection was also taken for which it was represented that the plaintiffs were not going to be examined, had not acted with due diligence and filed the present applications after lapse of more than seven years. This itself shows that the first petitioner/first plaintiff had not acted with due diligence and the present applications were filed for obvious reasons. It may also be pertinent to observe here that C.R.P.No.2369 of 2019 was dismissed on considering the merits of the matter, but not on the sole ground that no petition under Order XVIII, Rule 3-A of CPC was filed. Against the background of factual position as set out above, the first petitioner/first plaintiff, in view of her conduct, is not entitled to secure the relief sought for. This Court concurs with the conclusions/findings recorded by the trial Court while dismissing the above mentioned applications, which are based on sound reasoning and legal precedents.

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<sup>1</sup> 2019(5) ALT 284

In any event, the orders passed by the trial Court are legal and valid in the facts and circumstances of the case and there is no illegality or perversity therein. There are no merits warranting interference with the orders passed by the trial Court in exercise of the powers under Article 227 of the Constitution of India.

Accordingly, the Civil Revision Petitions are dismissed. As a sequel, all the pending miscellaneous applications shall stand closed. No order as to costs.

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**NINALA JAYASURYA, J**

Date: 30.04.2020  
AKC

**HON'BLE SRI JUSTICE NINALA JAYASURYA**

**CIVIL REVISION PETITION No.92 of 2020**

**&**

**CIVIL REVISION PETITION No.93 of 2020**

Dt: 30.04.2020

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