

**THE HON'BLE SRI JUSTICE K.SARATH**  
**CIVIL REVISION PETITION No.315 of 2023**

**ORDER:**

1. This Civil Revision Petition is filed under Article 227 of the Constitution of India, aggrieved by the order dated 11.01.2023 passed in I.A.No.875 of 2022 in I.A.No.231 of 2020 in O.S.No.2542 of 2009 on the file of IV Additional Senior Civil Judge, Ranga Reddy, whereunder the petition filed by the petitioner/defendant, for recall of CW1 for the purpose of re-examination, was dismissed.

2. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent.

3. The learned Counsel for the revision petitioner submits that the respondent/plaintiff filed a suit for declaration, recovery of possession and perpetual injunction. Upon the application of the revision

petitioner CW1 was examined by the Court below and called upon him to produce the originals of Exs.B15 and B-18, out of which only B-15 was produced and it was marked as Ex. C1. During the cross-examination of CW1 he was confronted with Ex.A-10 as to whether it belongs to the Society and signed by the then Secretary and the said document has been disputing by the petitioner/defendant and since stray evidence has come in the form of Ex.A-10 at the time of cross-examination of CW1, which was not part of the statement given by CW1 when he was examined in chief by the Court and since there is ambiguity in Ex.A10 to be clarified by CW1, the petitioner filed petition to recall CW1 but the same was dismissed by the Court below through impugned order.

4. The learned Counsel for the revision petitioner further submitted that the Court below has failed to

exercise its jurisdiction when an application was filed under Section 137 of Evidence Act r/w. Section 151 of Civil Procedure Code to re-examine CW1. When the plaintiff has not availed his turn to prove Ex.A-10, the court below could not have permitted the plaintiff to put questions on Ex.A-10. The Court below having passed an order on application filed by the defendant for production of some documents and the court cannot permit the plaintiff to put any questions regarding Ex.A-10. The plaintiff cannot fill up the lacuna of his case in the evidence of CW1. The entire cross-examination of CW1 ought to have been confined to the documents produced by him i.e. Ex.C1 and C2.

5. The learned Counsel for the revision petitioner further submits that when an official witness was summoned for a specific purpose, the scope of evidence is different and the Court below ought not have

permitted the plaintiff to put the questions on Ex.A10. The plaintiff cannot fill-up the lacuna during the cross-examination of CW1 thereby taking the defendant by surprise.

6. The learned Counsel for the revision petitioner further submits that at the end of cross-examination when the counsel for the petitioner/ defendant wanted to re-examine CW-1 to clarify ambiguity as the petitioner has no other alternative except to request the Court, as the court has failed to overrule the objection taken during the cross-examination. Under Section 138 of the Evidence Act, the chief examination of a witness of a party shall be called as chief examination, cross-examination, by the adverse party. There is imbibe right for other side to re-examine under the Evidence Act and the court ought to have passed an order allowing or rejecting the re-examination by giving cogent reasons. When the petitioner filed an

application, the court ought not to have passed an order of dismissal stating that the ambiguity cannot be filled up by undue cross-examination by the defendant and the said order suffers from jurisdiction error and requested to allow the Civil Revision Petition by setting the impugned order.

7. The learned Counsel for the petitioner in support of his contention relied on the following Judgments:

**1. Dahyabhai Chhaganbhai Thakakar Vs. State of Gujarath<sup>1</sup>**

**2. Raami @ Rameshwar Vs. State of Madhya Pradesh<sup>2</sup>**

8. The learned Counsel for the respondent submits that the Court below rightly dismissed the application filed by the petitioner as the witness cannot be allowed to be re-examined so as to provide an explanation when the said witness has answered the question 'yes' or 'no'

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<sup>1</sup> AIR 1964 SCC 1563

<sup>2</sup> (1999) 8 SCC 649

and CW-1 is an educated person, who is a Chartered Accountant and he has consciously chosen to give answers. Thus the re-examination cannot be sought and allowed with the sole object of giving chance to the witness to undo the effect of statement given earlier and the lacuna in the evidence cannot be filled up under the pretext of re-examination and a witness cannot be called for re-examination in a routine manner. There is no ambiguity in the answers given by the witness that requires explanation through re-examination. Any interpretation in respect of the answers given by the witness can be addressed by the counsel at the time of making submissions and there are no grounds to interfere with the orders passed by the Court below and requested to dismiss the Civil Revision Petition.

9. The learned Counsel for the respondent in support his contention placed reliance on the following Judgments:

**1. Veeram Mohan Reddy Vs. Rebba Pedda Agaiah<sup>3</sup>**

**2. Simrin Singh Vs. Amrit Srinivasan<sup>4</sup>**

**3. Capitol Art House (P) Ltd., Vs. Neha Datta<sup>5</sup>**

10. After hearing both sides and on perusal of the record, it discloses that the respondent/plaintiff herein filed suit against the petitioner/defendant for declaration, recovery of possession and perpetual injunction. Upon an application made by the revision petitioner herein, the Court below summoned CW-1 for production of the documents and he was examined in chief by the Court and thereafter the counsel for the petitioner cross-examined CW1 and subsequently the

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<sup>3</sup> 2008 (2) ALT 329

<sup>4</sup> 2018 SCC Online Del 7177

<sup>5</sup> 2022 scc On Line Del 1746

learned Counsel for the respondent cross-examined him.

11. Now the grievance of the petitioner is that some stray evidence has come in the form of Ex.A10 through CW1 and there is ambiguity with respect to Ex.A-10 to be clarified through the evidence of CW1 and therefore filed petition to recall CW1 for the purpose of re-examination and the said petition was dismissed, which is impugned in this revision.

12. The Court below in the impugned order held that the CW1 is a well-educated person and he has consciously chosen to give answers and under the guise of re-examination, the petitioner cannot ask CW1 to give further explanation to the answers given by him during the course of cross-examination by the respondent and the re-examination cannot be used to give a chance to the witness to undo the statement of



the witness made in the cross-examination and fill the lacuna in the evidence and it cannot be permitted.

13. The petitioner filed the I.A under Section 137 of the Evidence Act read with Section 151 of Civil Procedure Code, but the same is not correct provision and the Section 137 of the Indian Evidence Act deals with the Examination-in-chief and the said provision not apply to the instant case. The Section 138 of the Evidence Act apply to the instant case.

14. Section 137 of Indian Evidence Act, 1872, read as follows:

**137. Examination in chief:**

*Examination-in-chief.*—The examination of a witness by the party who calls him shall be called his examination-in-chief.

*Cross-examination.* The examination of a witness by the adverse party shall be called his cross-examination.

*Re-examination.* The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

15. Section 138 of the Indian Evidence Act, reads as follows:

**Order of examinations.**- (1) A witness shall be first examined-in-chief, then (if the adverse party so desires) cross examined, then (if the party so desires) re-examined.

(2) The examination and cross examination must relate to relevant facts but the cross examination need not be confined to the facts to which the witness testified on his examination in chief.

(3) Direction of re-examination : The re-examination shall be directed to the explanation of matters referred to in cross examination; and if new matter is, by permission of the Court, introduced in reexamination, the adverse party may further cross-examine upon that matter.

16. The learned Counsel for the petitioner relying on the Judgment of the Hon'ble Supreme Court in **Rammi @ Rameshwar Vs State of Madhya Pradesh (supra 2)** contended that if the party who called the witness feels that explanation is required for any matter

referred to in cross-examination he has the liberty to put any question in re-examination to get the explanation, but the Court cannot direct him to confine his questions to ambiguities alone which arose in cross-examination and there is no warrant that re-examination should be limited to one or two questions. If the exigency requires any number of questions can be asked in re-examination.

17. In the instant case CW1 was examined in chief by the Court. As per the order of examination under Section 138 of Indian Evidence Act, the party who was examined in chief can only re-examine the witness, therefore the judgments relied on the learned Counsel for the petitioner not apply to the instant case.

18. The judgment relied on by the learned Counsel for the respondent in ***Vesam Mohan Reddy Vs. Rebba Pedda Agaiah (supra 3)***, this Court held that the

cross-examination under Section 138 of the Evidence Act need not be confined to the facts to which the witness testified in examination in chief, but he can be examined as to the whole of the case.

19. ***In Joginder Singh Vs. Devinder Kumar***<sup>6</sup> the Punjab and Haryana High Court at para No.6, held as follows:

*6.....Once, the witnesses had been cross-examined, they could not be recalled for further cross-examination only on the ground that they had not been cross-examined effectively by the Advocate who cross-examined them on the date they put in appearance. If such type of applications are allowed and witnesses are permitted to be further cross-examined, it will open a flood gate of litigation and a party would be entitled to move such applications either by changing counsel or by simply saying that on the date the witnesses were cross-examined, a specific question could not be put to them or that they could not be cross-examined effectively. Under the provisions of the Code, it is always open to the Court to recall the witness in case there is an ambiguity in his statement or the Court is of the opinion that some clarification is required”*

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<sup>6</sup> 19898 scc online P&H 1288

20. The re-examination cannot be sought and allowed with sole object of giving chance to the witness to undo the statement of the witness in the cross-examination and fill the lacuna in the re-examination. In the instant case, Ex.A-10 is not a stray document and it is marked at the time of chief-examination of the plaintiff and the same is in the knowledge of the defendant. Therefore, the counsel for the petitioner/defendant has a chance to clarify the same at the time of his cross-examination.

21. The Court below rightly held that the CW1 is a well educated person and he has consciously chosen to give answers and under the guise of re-examination the petitioner cannot ask CW1 to give further explanation to the answers given by him during the course of cross-examination by the respondent. Therefore, there is no infirmity or illegally committed by the Court below

to interfere with the impugned order and therefore the Civil Revision Petition is liable to be dismissed.

22. Accordingly, the Civil Revision Petition is dismissed as devoid of merits.

23. Miscellaneous petitions, if any pending in this revision, shall stand dismissed. There shall be no order as to costs.

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**JUSTICE K. SARATH**

**Date.20.09.2023**

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