

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.M.A.No. 911 OF 2014

JUDGMENT: *(per Hon'ble Sri Justice Ramesh Ranganathan)*

Heard Sri A.Ravi Babu, learned counsel for the appellant, and Sri A.Ravinder Reddy, learned counsel for the respondents, and, at their request, the civil miscellaneous appeal is disposed of at this stage.

The order under challenge in this civil miscellaneous appeal is the order of the XII Additional Chief Judge (FTC), City Civil Court, Hyderabad, in I.A.No. 706 of 2012 in O.S.No. 236 of 2008 dated 10-09-2014, rejecting the request of the appellant herein to set aside the order dated 20-07-2012, whereby the suit in O.S.No. 236 of 2008 was dismissed for default.

In the affidavit, filed in support of the I.A., the petitioner stated that he could not appear before the Court on 27-06-2012 as he was unwell; his counsel had represented the case, and had obtained an adjournment; he had noted the next date of hearing as 28-07-2012, instead of 20-07-2012, inadvertently; and, it is in such circumstances, that neither he nor his counsel represented the matter when it was listed on 20-07-2012.

The Court below, by a cryptic order, dismissed the I.A. holding that a perusal of the docket order showed that a number of opportunities were given to the petitioner-plaintiff; and there were no merits in the petition. The specific contention urged by the petitioner, that a wrong noting of the date by his counsel had resulted in their non-appearance on 20-07-2012, was not even dealt with.

Sri A.Ravi Babu, learned counsel for the appellant, would submit that, as the cause shown by the petitioner is sufficient, the order dated 20-07-2012 should itself be set aside.

As the order of the Court below is bereft of reasons, and was passed without considering the issue and, as it appears that non-appearance was on account of a *bona fide* mistake of the counsel in noting the date of adjournment, we consider it

appropriate to set aside the order dated 20-07-2012 on condition that the appellant pays Rs.2,500/- as cost to respondent Nos. 1 and 2 each, and files proof of payment before the Court below within ten days from today. A copy of the order passed by this Court shall be placed before the Court below within one week from today; and the affidavit, in lieu of chief-examination, shall be filed within one week thereafter.

The civil miscellaneous appeal is disposed of accordingly. Pending miscellaneous petitions, if any, in this appeal shall stand closed in consequence.

RAMESH RANGANATHAN, J.

M.SATYANARAYANA MURTHY, J.

Date: 31st March, 2015.

Note: Issue C.C. in two days.

B/O

JSK