

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.1914 of 2015

ORDER:

This Revision Petition is filed challenging the order dt.20-03-2015 in I.A.No.1022 of 2013 in O.S.No.1186 of 2013 of the V Senior Civil Judge, City Civil Court, Hyderabad.

2. Petitioner herein is the defendant in the above suit which has been filed by respondent/plaintiff seeking a decree for a sum of Rs.8,69,000/- against him. The petitioner was set *ex parte* and the suit was decreed on 21-09-2013 with costs of Rs.25,313/-.
3. The petitioner filed I.A.No.1022 of 2013 under Order 37 Rule 4 CPC contending that his address was wrongly given in the cause title in the suit; that the respondents had served summons on him without annexures or the plaint which is mandatory under Order 37 Rule 3 (1) CPC; and therefore suit itself is not maintainable. It was further contended that the originals of the suit documents such as agreement of sale and receipt were not filed; and on the basis of photo copies thereof, summary judgment could not have been granted.
4. This application was opposed by the respondent.
5. By order dt.20-03-2015, the Court below allowed the said application subject to the petitioner depositing half of the suit costs by 06-04-2015. It held that it was mandatory on the part of the respondent/plaintiff to serve the copy of the plaint and all the material documents on the petitioner under order 37 Rule 1 CPC; that she did not do so and she has also not filed any proof of such service on the petitioner; that the petitioner had

contended that the agreement of sale and the stamp are forged and that he had a good case; and therefore an opportunity should be given to the petitioner to contest the suit on merits.

6. Challenging the same this Revision Petition is filed to the extent the Court below had imposed a condition on the petitioner to deposit half of the suit costs by 06-04-2015.
7. Learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in **Neebha Kapoor Vs. Jayantilal Khandwala and others** and contended that the petitioner is entitled to unconditional leave to defend particularly when original documents were not produced.
8. Order 37 Rule 3 (5) CPC states that in a summary suit filed under Order 37, the defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just.
9. Order 37 Rule 4 CPC states that after decree in a summary suit, the Court may, under special circumstances set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.
10. Therefore, if leave to defend is sought for by the defendant before passing of a decree, then the Court is entitled to grant

leave to him unconditionally or upon such terms as may appear to it just. Therefore, it has a choice in the matter. However, where an application is filed under Order 37 Rule 4 CPC to set aside a decree passed in a summary suit, the Court can grant leave to the defendant to appear to the summons and to defend the suit by setting aside such decree if it seems reasonable for it to do but while doing so, it has to impose terms. This is clear from the use of the words “and on such terms the Court thinks fit”. Thus there is no discretion to the Court while exercising power under Order 37 Rule 4 CPC of not imposing any terms while such a discretion it would possess while exercising power under Order 37 Rule 3 (5) CPC.

11. In **Neebha Kapoor** (1 supra), the Supreme Court no doubt held that for obtaining a summary judgment in terms of Order 37 of the Code, ordinarily the original documents must be produced. And if they are not filed, the plaintiff is obligated to prove loss of documents and that a decree could not have been granted on the basis of Photostat copies of document. The said judgment of the Supreme Court did not consider the terms of Order 37 Rule 4 CPC and it dealt with Order 37 Rule 1 and Order 37 Rule 3 (5) and (6) CPC.

12. Therefore, the principle laid down therein cannot be applied to the present case. Since the Court while exercising power under Order 37 Rule 4 is obligated to impose terms on the defendant and the Court below has imposed such terms by asking the petitioner/defendant to deposit half of the suit costs, no error can be said to have been committed by it.

13. Therefore, I do not find any error of jurisdiction in the order

passed by the Court below.

14. Accordingly, the Civil Revision Petition is dismissed, but in the circumstances, time is granted up to 26-06-2015 to the petitioner to deposit half of the suit costs as directed by the Court below in its Order dt.20-03-2015 in I.A.No.1022 of 2013 in O.S.No.1186 of 2013. In default of complying with this order, the order passed by the Court below shall take effect. No costs.

15. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 12-06-2015

Note:

Issue C.C. in three days.

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