

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

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CIVIL REVISION PETITION No.2490 OF 2015

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Between:

Kosuri Ranga Prasad

.. Petitioner

And

Peethani Sambaiah (died) and others.

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 12-08-2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE SANJAY KUMAR

- | | |
|---|--------|
| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. Whether Their Lordship wish to
see the fair copy of the Judgment? | Yes/No |

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.2490 of 2015

ORDER:

The petitioner is the second defendant in O.S.No.61 of 2006 on the file of the learned VI Additional District Judge (FTC), Narsapur. He

was set *ex parte* in the said suit on 22.06.2006. He filed I.A.No.7 of 2015 in the suit under Order IX Rule 7 CPC to set aside the order dated 22.06.2006, setting him *ex parte*, so as to enable him to file his written statement and contest the suit. By order dated 12.06.2015, the trial Court dismissed this petition. Aggrieved thereby, the petitioner/second defendant is before this Court by way of this civil revision petition filed under Article 227 of the Constitution.

Notice having been served, the respondents entered appearance before this Court through learned counsel.

Heard.

The case of the petitioner/second defendant before the trial Court was that though he received summons in the subject suit, he could not enter appearance immediately owing to ill health and thereafter, he forgot to do so. He further stated that the first defendant in the suit filed O.S.No.175 of 2007 against him and his brothers for specific performance and the said suit was clubbed with the present suit, O.S.No.61 of 2006. Only then he realized that he had been set *ex parte* in the subject suit and he accordingly filed I.A.No.7 of 2015 in the subject suit under Order IX Rule 7 CPC. It appears that the plaintiff in the subject suit did not contest this petition and only the first defendant filed a counter opposing it. He contended that the petition was not maintainable on facts or in law and suffered from inordinate delay.

The trial Court found that sufficient cause was not shown for the non-appearance of the petitioner/second defendant and the petition to set aside the order dated 22.06.2006 setting him *ex parte* in the suit proceedings was filed with a long delay only in January 2015. The trial Court therefore held that the petition was devoid of merit and accordingly dismissed the same.

Sri K. Chidambaram, learned counsel for the petitioner/second defendant, conceded that there was delay and negligence on the part of his client. He however argued that the trial Court was not correct in completely excluding him from the suit proceedings. He placed

reliance on **N. Bayyapu Reddy v. M. Surya Prakash**^[1] in support of his contention that the petitioner/second defendant should be permitted at least from this stage to participate in the suit proceedings.

Perusal of the judgment cited by the learned counsel reflects that the facts in that case were somewhat similar to those in the case on hand. Four of the defendants in that suit were set *ex parte* in the year 2003 and they filed applications under Order IX Rule 7 CPC to set aside the said orders only in September 2008. They also sought leave to file written statements and lead evidence. The trial Court held against them leading to the filing of the civil revision petition before this Court. Relying on the judgments of the Supreme Court in **Sangram Singh v. Election Tribunal, Kotah and another**^[2] and **Arjun Singh v. Mohindra Kumar**^[3], this Court held that the defendants, who were set *ex parte* earlier, could not be stopped from participating in the proceedings from the stage at which they chose to put in appearance. The petitioners in that case were accordingly granted liberty to participate in the suit proceedings from the stage the suit stood as on that date. They were not given leave to file their written statements or re-open the evidence insofar as the completed examination of witnesses was concerned.

It is stated that the second plaintiff in the suit, respondent No.2 herein, has commenced her evidence and the suit proceedings are at the stage of her cross-examination.

In that view of the matter and in the light of the law laid down by the Supreme Court which was followed by this Court in **N. Bayyapu Reddy**¹, the order dated 12.06.2015 passed by the trial Court in I.A.No.7 of 2015 in O.S.No.61 of 2006 is set aside. The *ex parte* order dated 22.06.2006 is also set aside and the petitioner/second defendant is permitted to participate in the suit proceedings from the present stage. He shall however not be allowed to file his written statement but shall only take part in the suit proceedings from the

stage at which they are presently pending.

The civil revision petition is allowed to the extent indicated above.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

12th August, 2015
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[\[1\]](#) 2012 (1) ALT 417

[\[2\]](#) AIR 1955 SC 425

[\[3\]](#) AIR 1964 SC 993