

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

Civil Revision Petition No. 2809 of 2015

Between:

Arisetty Satyanarayana Murthy

.. Petitioner (s)

And

G. Rajendra Kumar Golecha

.. Respondent (s)

DATE OF JUDGMENT PRONOUNCED: 24.07.2015

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SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments?

Yes/No

2. Whether the copies of judgment may be
marked to Law Reporters/Journals?

Yes/No

3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment?

Yes/No

THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

Civil Revision Petition No. 2809 of 2015

Order:

This Civil Revision Petition is directed against the orders, dated 31.03.2015, passed in CMA No.7 of 2010 by the learned Senior Civil Judge, Bobbili.

2. The facts, in brief, are as under. The petitioner herein is the plaintiff and the respondent herein is the defendant in OS No.174 of 2009 on the file of the Junior Civil Judge, Salur. The petitioner herein filed the said suit against the respondent for specific performance of agreement of sale, dated 03.09.1999, in respect of the suit schedule house property bearing Door No.582-2-25, in Ward No.9, situated at Konki Veedhi, Salur Municipality, Vizianagaram District. When the respondent/defendant, in spite of receiving suit summons, did not appear before the trial Court on 20.01.2010 and also on subsequent date of hearing i.e., on 25.01.2010, he was set *ex parte* and, thereafter, after recording the evidence of the petitioner/plaintiff as PW.1 and marking Exs.A1 to A5, the learned Junior Civil Judge, Salur, has passed the *ex parte* decree in the said suit on 05.02.2010. Aggrieved by the same, the respondent/defendant filed IA No.40 of 2010 in OS No.174 of 2009 seeking to set aside the *ex parte* decree, dated 05.02.2010, and the learned Junior Civil Judge, by an order, dated 09.08.2010, dismissed the said application. Against the said orders, the respondent/defendant preferred CMA No.7 of 2010 on the file of the learned Senior Civil Judge, Bobbili, and the learned Judge, by the impugned order, dated 31.03.2015, allowed the said CMA on condition of the respondent/defendant depositing suit costs to the credit of the suit besides paying costs of Rs.500/- to the plaintiff's counsel. Aggrieved by the said orders, the petitioner/plaintiff filed the present revision.

3. The contention of the learned counsel for the petitioner/plaintiff is that the respondent/defendant was not diligent in pursuing his case and that the trial Court, after giving adequate and reasonable opportunities to the respondent/defendant, has decreed the suit *ex parte* and, therefore, the application filed by him to aside the *ex parte* decree was not acceded to by the trial Court, but the lower appellate Court, without appreciating the same in proper perspective, allowed the CMA and set aside the *ex parte* decree passed against the respondent/defendant. It is further contended that the suit for specific performance of agreement of sale dated 03.09.1999 was filed in the year 2009 and even though the CMA was filed in the year 2010, it was disposed of only in March 2015, therefore, the petitioner/plaintiff, being senior citizen aged about 80 years, has been made to suffer due to the acts of the respondent/defendant in protracting the litigation.

4. A perusal of the record would show that when the respondent/defendant, in spite of receipt of suit summons, did not appear before the trial Court he was set *ex parte* and, subsequently, an *ex parte* decree was passed against him. The application filed by the respondent/defendant to set aside the *ex parte* decree was also dismissed by the trial Court. Thereafter, he filed CMA No.7 of 2010 before the lower appellate Court, which was allowed by the impugned orders. Aggrieved by the same, the petitioner/plaintiff filed the present revision. The suit is filed for specific performance of agreement of sale in respect of immovable property. Therefore, the lower appellate Court, having considered the entire material on record and having observed that the issue *inter se* the parties is not finally heard and decided and in order to give quietus to the issue involved *inter se* the parties, has rightly allowed the CMA and set aside the *ex parte* decree passed against the respondent/defendant, however, by imposing some reasonable costs on the respondent/defendant. In the circumstances, I see no reason much less any valid reason to interfere with the

impugned order passed by the lower appellate Court. The CRP is devoid of merit and the same is liable to be dismissed at the stage of admission, however, with certain directions with regard to disposal of the suit.

5. Accordingly, the CRP is dismissed at the stage of admission. However, the learned Junior Civil Judge, Salur, is directed to dispose of OS No.174 of 2009 in accordance with law, as expeditiously as possible, preferably within a period of six (6) months from the date of receipt of a copy of this order. No costs.

6. As a sequel thereto, the miscellaneous petitions, if any, pending in the Civil Revision Petition shall stand closed.

M.S.K. JAISWAL, J.

Date: 24.07.2015

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