

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2043 of 2015

ORDER:-

Heard learned counsel for the petitioner and learned counsel for the respondents. With the consent of the parties, the civil revision petition is disposed of at the admission stage itself.

The present civil revision petition is filed under Article 227 of Constitution of India, aggrieved by an order dated 07.04.2015 passed by the II Additional District Judge at Jagtial, Karimnagar District, in C.M.A.No.6 of 2014.

The facts, which lead to filing of the present civil revision petition, in brief, are as under:

The respondent herein filed O.S.No.11 of 2010 on the file of the Junior Civil Judge at Jagtial seeking perpetual injunction restraining the petitioner herein and his men from interfering with her peaceful possession over the suit schedule property. On 04.12.2012, the suit came to be dismissed on the ground that the respondent was absent and there was no representation on her behalf in spite of granting several adjournments. Thereafter, the respondent filed I.A.No.162 of 2013 under Order IX Rule 9 r/w Section 151 CPC seeking to set aside the order of dismissal and to restore the suit to its file. The said application was dismissed on 20.08.2014 wherein it was held that though ample opportunities were given to the respondent, she did not utilize the same and the reason of ill-health was not supported by any medical evidence. Challenging the same, the respondent filed C.M.A.No.6 of 2014 before the Court of the II Additional District Judge, Karimnagar at Jagtial under Order 43 Rule 1 CPC which was allowed on 07.04.2015. Questioning the same, the petitioner/defendant filed the present civil revision petition.

Learned counsel for the petitioner submits that the findings recorded by the appellate Court are incorrect and the appellate Court ought not to have given importance to that portion above the order of dismissal dated 04.12.2012 passed by the trial Court wherein the presence of the counsel for the respondent/plaintiff was recorded, when the said order would reveal that the respondent was called absent and there was no representation on her behalf even till 5.00 p.m. The learned counsel further submits that the finding of the appellate Court that the respondent has paid costs of Rs.100/-, is incorrect, for the reason that the said amount came to be paid after dismissal of the suit on 04.12.2012.

Per contra, the learned counsel for the respondent submits that the order passed by the appellate Court is based on material available on record and hence the same warrants no interference.

In so far as the presence of the counsel for the respondent/plaintiff is concerned, the order of dismissal dated 04.12.2012 passed in the suit would disclose as under:

“Plaintiff called absent. No representation even till 5.00 p.m. Costs not paid. Plaintiff is not evincing interest in commencing trial since February, 2012 in spite of several adjournments and conditional order. Hence, suit is dismissed for default.”

But however, the portion above the order indicates the presence of the counsel for the respondent. The said portion of the order passed by the trial Court would show the presence of the counsel for the plaintiff. Apart from that, the material on record would show that the costs of Rs.100/- was paid at the Bar Association, Jagtial, to the credit of the suit on 04.12.2012 i.e., the day on which the suit was dismissed for default. With a view that the matter be decided on merits, the appellate Court gave an opportunity to the parties to contest the suit. In view of the same, I see no error in the impugned order and it warrants no

interference.

At this stage, the learned counsel for the petitioner submits that the trial in the suit has already commenced and the case is posted for the cross-examination of P.W.1. Hence, seeks a direction to the trial Court to dispose of the suit, at the earliest.

In the result, the Civil Revision Petition is dismissed. However, in view of the representation made by the learned counsel for the petitioner, the trial Court is advised to dispose of the suit within a period of three (3) months from the date of receipt of a copy of the order. Both the parties shall cooperate with the Court for an early disposal of the suit. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any, pending in the revision shall also stand dismissed.

C. PRAVEEN KUMAR, J

21st August, 2015
cbs

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2043 of 2015

21st August, 2015

cbs