

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 4176 of 2015

DATED 23rd December, 2015

BETWEEN

M.Sugunakar Reddy

...Petitioner

And

Smt. A.Vani

...Respondent.

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 4176 of 2015

ORDER:

The petitioner herein is the plaintiff in O.S.No.216 of 2010 on the file of the learned Chief Judge, City Civil Court, Hyderabad. The said suit was filed seeking specific performance of the agreement of sale dated 17.11.2009, In the

said suit, it appears that the respondent/defendant was set *ex parte* on 29.12.2010 on the ground that she has refused to receive the summons. Accordingly an *ex parte* decree was passed on 16.03.2011. Thereafter the petitioner/plaintiff filed E.P.No.177 of 2011 and the respondent/defendant filed her vakalat on 23.01.2012. After filing the Vakalat, she filed the application being I.A.No.3238 of 2012 on 7.2.2012 for setting aside the *ex parte* decree and judgment dated 16.3.2011. The petitioner/plaintiff filed detailed counter stating that the address of the respondent/defendant in the petition filed in I.A.No.3238 of 2012 and the address particulars mentioned in the list of documents is one and the same and when the summons were sent on the same address, they were returned with an endorsement 'did not claim'. Thereafter the Process Server of the Court below had filed his report stating that on 24.06.2010 he went to the house of the respondent/defendant and as she was not available, he affixed the summons on the main door. The Bailiff of the Court below had also filed his report on 20.12.2010 stating that the respondent/defendant refused to receive the summons and as such the summons were affixed on the outer door. Taking into consideration the same, the Court below set the respondent/defendant *ex parte* and an *ex parte* decree and judgment was passed on 16.3.2011. Despite the said elaborate explanation of the factual scenario, the Court below without giving any finding on the refusal of summons and in absence of any application seeking condonation of delay in filing the impugned application to set aside the *ex parte* decree, allowed the I.A.No. 3238 of 2012 through the order under revision dated 2.7.2014.

In the present Civil Revision Petition also, even after receipt of the notice, none appeared for the respondent/defendant nor any representation is made on her behalf.

In the circumstances, this Court is constrained to set aside the order dated 2.7.2014 passed in I.A.No.3238 of 2012 and remand I.A.No. 3238 of 2012 to the Court below for passing orders afresh, in accordance with law by

recording a finding with regard to the refusal of summons by the respondent/defendant and also recording a finding as to whether the impugned application for setting aside the ex parte decree dated 16.3.2011 is maintainable without there being an application for condition of delay in filing such application.

The Civil Revision Petition is allowed to the extent indicated above. Miscellaneous petitions pending consideration if any in the Civil Revision Petition shall stand closed in consequence. No order as to costs.

JUSTICE A. RAMALINGESWARA RAO

DATED 22nd December, 2015.

Msnr_x