

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

C.R.P.No.3193 of 2013

ORDER:

Heard Smt.Neeraja Sudhakar Reddy, learned counsel for Smt. NVR Rajyalaxmi, learned counsel for the petitioner. None appears for the respondents.

2. This Revision Petition is filed challenging the order dt.23-04-2013 in I.A.No.1542 of 2013 in I.A.No.274 of 2011 in O.S.No.700 of 2010 of the I Additional Senior Civil Judge, Ranga Reddy.

3. The petitioner herein was initially a third party in the above suit. He had filed I.A.No.274 of 2011 under Order 1 Rule 10 CPC to implead him as plaintiff No.29 since he had purchased the suit schedule property.

4. Counter affidavit was filed by defendant Nos.1 and 2/
R-31 and R-32 herein in the said I.A. opposing his impleadment. The plaintiffs reported no objection. By order dt.21-09-2012, the said I.A.No.274 of 2011 was allowed.

5. On 24-09-2012, I.A.No.1542 of 2012 was filed by defendant Nos.1 and 2/R-31 and R-32 herein under Section 151 CPC to set aside the order passed by the Court allowing I.A.No.274 of 2011 on 21-09-2012.

6. They contended that on 21-09-2012 when the I.A. was called, their counsel could not reach in time during call work as he was held up in traffic and by the time he reached the Court, the matter had already been called and the application was found to have been allowed on the ground that the plaintiffs had endorsed that they have no objection for allowing the said application. It was contended that no opportunity had been given to respondent Nos.31 and 32 to put forth their case and since the said Order dt.21-09-2012 was passed in violation of natural justice, they prayed that the order dt.21-09-2012 in I.A.No.274 of 2011 be set aside.

7. Counter affidavit was filed by the petitioner contending that I.A.No.1542 of 2012 was not maintainable. It was contended that if respondent Nos.31 and 32 were aggrieved by the orders passed allowing I.A.No.274 of 2011, they have to avail the remedies available under the Civil Procedure Code and they cannot file a petition under Section 151 CPC raising a flimsy ground that their counsel could not come to the Court on time during call work and represent the matter and that the orders were passed. It was also denied that any counter was filed by the respondent nos.31 and 32. It is alleged that copy of such a counter was not served on the petitioner or his counsel at any time; and that deponent of the affidavit filed in I.A.No.1542 of 2012 himself was present in the Court when the petition was allowed. Other

objections were also raised. He therefore prayed that the application be dismissed with exemplary costs.

8. By order dt.23-04-2013, the Court below allowed the said application. The Court noted that on the docket of 21-09-2012, it was mentioned “other side plaintiffs made an endorsement on the petition to allow the petition. Accordingly this petition was allowed”; that arguments of the respondent Nos.31 and 32 who are defendant Nos.1 and 2 in the suit were not heard even according to the docket; that a counter affidavit had been filed by respondent Nos.31 and 32 as early as on 21-03-2011; therefore opportunity should be given to respondent Nos.31 and 32 to contest the said I.A. It rejected the contention of the counsel for the petitioner that since the I.A. had already been allowed and the amendment also had been carried out, the only remedy available to the respondent Nos.31 and 32 was to approach appellate Court and that they cannot maintain the present application.

9. Questioning the same, this Revision Petition is filed.

10. Learned counsel for the petitioner contended that the Court below ought not to have entertained the said application at all since the said application had been filed under Section 151 CPC and the

only course of action available to the respondent Nos.31 and 32 was either to seek a review of the said order or to file a Revision in this Court. She further contended that it was specifically contended in the counter filed by the petitioner that the counsel for respondent Nos.31 and 32 was present in Court and that therefore it is not open to the Court below to have entertained and allowed the said application.

11. It is no doubt true that the application I.A.No.1542 of 2012 had been filed by the respondent Nos.31 and 32 invoking Section 151 CPC. The said application appears to have been filed within three days of the order dt.21-04-2012 allowing I.A.No.274 of 2011 on the ground that their counsel was not heard at the time when the said I.A. was decided; that the contents of the counter filed by them were not taken into account by the Court below; and the absence of their counsel was on account of the fact that he was stuck up in the traffic and did not reach the Court during call work. The fact that the contents of the counter filed by respondent Nos.31 and 32 on 21-03-2011 were not considered while allowing I.A.No.274 of 2011 is crystal clear even from the docket order dt.21-09-2012 which made no reference to it. The said docket order extracted above also made no reference to the Court having heard the arguments of respondent Nos.31 and 32. Thus it was clearly a case of

the said I.A. being allowed without considering the objections of the respondent Nos.31 and 32.

12. It may be that the application I.A.No.1542 of 2012 was filed quoting Section 151 CPC which may not be directly attracted, but that cannot be a ground to dismiss the said I.A.

13. The application I.A.No.1542 of 2012 can as well be treated as an application for review under Order 47 Rule 1 CPC since it is settled law that quoting of wrong provisions of law cannot be a ground to dismiss an application. {**State of Karnataka Vs. Muniyalla**^[1], **B.S.E. Broker's Forum, Bombay and others Vs. Security and Exchange Board of India and others**^[2] and **Vikram Singh Junior High School Vs. District Magistrate (Fin. & Rev.) and others**^[3] }.

14. I also do not agree with the contention of the learned counsel for the petitioner that the contention raised by respondent Nos.31 and 32 would not fit into parameters of Order 47 Rule 1 CPC for the reason that the Court is bound to hear both sides before it passes an order and when the Court itself admits that it has not done, in order to prevent miscarriage of justice, the Court can set aside its earlier order by exercising power of review.

15. I am also of opinion that no prejudice will be

caused to the petitioner by this, inasmuch as the I.A.No.274 of 2011 was directed by the Court below to be reheard after hearing contentions of the counsel for respondent Nos.31 and 32 as well.

16. In my considered opinion, this is not a fit case to interfere with the exercise of jurisdiction by the Court below in setting aside its earlier order dt.21-09-2011 in I.A.No.274 of 2011 and in allowing I.A.No.1542 of 2012.

17. Accordingly, the Civil Revision Petition is dismissed. However, since the said I.A.No.274 of 2011 is said to have been pending since 2011, the Court below shall dispose of the same in accordance with law after hearing counsel for respondent Nos.31 and 32 as well, within a period of four weeks from the date of receipt of a copy of this order. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 25-08-2015

Note:

Issue C.C. in a week.

B/o.

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[\[1\]](#) (1985) 1 S.C.C. 196

[\[2\]](#) (2011) 3 S.C.C. 482

[\[3\]](#) (2002) 9 S.C.C. 509