

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.2295 of 2016

ORDER:

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This Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 ('the Code', for brevity) is filed by the Judgment Debtors assailing the orders dated 19.02.2015 of the learned Principal Junior Civil Judge, Visakhapatnam passed in EA.no.29 of 2015 in EA.no.363 of 2013 in EP.no.125 of 2003.

2. I have heard the submissions of the learned counsel for the revision petitioners/Judgment Debtors ('the JDrs', for brevity) and the learned counsel for the respondents/Decree Holders ('the DHrs', for brevity). I have perused the material record.

3. The EP.no.125 of 2003 filed pursuant to a decree obtained by the DHrs in a suit for perpetual injunction was dismissed for default. Therefore, the DHrs filed EA.no.363 of 2013 for restoration of the EP that was dismissed for default. Even that EA was dismissed for default. Therefore, the DHrs had filed EA.no.29 of 2015 seeking to set aside the dismissal order for default passed in EA.no.363 of 2013 and for restoration of the said execution application. In support of the said request, the DHrs in the affidavit filed in support of the said petition in EA.no.29 of 2015 had *inter alia* contended that the counsel had mistakenly noted the date of adjournment and that, therefore, they could not be present when EA.no.363 of 2013 was listed before the Court and that in the said circumstances the said application was dismissed for default and that therefore, the dismissal order may be set aside. That application was allowed by a cryptic order. However, as rightly pointed out by the learned counsel for the JDrs, the order impugned was passed even without directing notices to the JDrs in the said Execution Application. The order passed is also a cryptic order and not a reasoned order. And, a reading of the order does not show that notices were served on the JDrs or that they

were either set *ex parte* or their counsel was heard. The law is well settled that when an order allowing an interlocutory application is passed by the Court without ordering notice to a necessary party or without service of notice on such party at all, such order is liable to be recalled or set aside as an order passed in such circumstances in violation of principles of natural justice is unsustainable.

4. Viewed thus, this Court finds that the order impugned warrants interference.

5. In the result, the Civil Revision Petition is allowed and the order impugned is set aside; and, EA.no.29 of 2015 in EA.no.363 of 2013 in EA.no.125 of 2003 is remitted to the Court below. Having regard to the facts of the case, the Court of execution is now directed to dispose of EA.no.29 of 2015 afresh in accordance with the procedure established by law, however, after giving an opportunity to the JDrs to file their counter, if any. To avoid any further delay, the JDrs are directed to file their counter in the said EA within (20) days from the date of the receipt of a copy of this order.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.SEETHARAMA MURTI, J

18th March, 2016
Vjl