HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4067 of 2015

ORDER:

The revision petitioner is respondent/tenant in R.C.No.21 of 2010 filed by revision respondent Nos.1 & 2, the landlords, for eviction. On contest, R.C.No.21 of 2010 was ended in dismissal vide order dated 20.12.2013. Thereafter, the landlords preferred R.A.No.8 of 2014 and the lower Appellate Court vide order dated 04.08.2015 allowed the appeal. It is impugning the same the present revision is maintained by the tenant/respondent to R.C.No.21 of 2010 and R.A.No.8 of 2014 supra.

Before going into other merits when it is suffice to say in R.A.No.8 of 2014, the respondent/tenant originally having been served, failed to attend and was set exparte. While the matter was coming for the hearing of the arguments of appellant to decide on merits, the respondent/tenant filed I.A.No.1507 of 2014 to set aside the exparte order dated 24.09.2014 and the same was allowed by reporting no counter by appellant/landlord vide order dated 18.11.2014. It is to say after 18.11.2014, the matter is contesting by respondent/tenant. However, a perusal of the docket proceedings after 18.11.2014 from 19.12.2014 reflects that after called for and received the record of the lower Court, it was posted for hearing as a last chance and later, on 06.03.2015, posted as appellant called absent with no representation to 08.04.2015 and it is nothing reflected therefrom as to respondent was present or not and represented or not and again on 28.04.2015, it was reflected so in posting the matter to 10.06.2015 and therefrom at request of counsel for appellant while the matter was coming time to time and ultimately on 28.07.2015, the docket proceedings reflects heard the appellant counsel and posted for orders to 04.08.2015 and on 04.08.2015, the appeal was allowed setting aside the dismissal order in R.C.No.21 of 2010 supra. The

docket clearly reflects as if proceeded of the respondent remained exparte for nothing noted of presence or participation and even on 18.11.2014 by order in I.A.No.1507 of 2014, the exparte order against the respondent tenant was set aside in the appeal to decide on merits. A perusal of the order of the lower Court in R.A.No.8 of 2014 reflects from description of the parties present, served and represented by advocates or not, as if respondent called absent and set exparte and not only that a perusal of the order at Para 8 it equally reflects as if heard only appellant and respondent called absent and set exparte. So the lower Court virtually proceeded ignoring the docket order dated 18.11.2014 in I.A.No.1507 of 2014 despite the exparte order against the respondent tenant was set aside by ignoring the same as if respondent remained exparte, suffice to say even respondent is on record from the exparte order set aside, the matter was proceeded as if an exparte proceeding and it is one of the grounds in revision of no opportunity of hearing afforded. No doubt it is the duty of the respondent having filed the application since allowed on 18.11.2014 to participate in the proceedings. Had the order any where reflects of hearing of the respondent, the Court can, if otherwise on merits, sustain the order. But a reading of the order totally reflects as if respondent did not participate. It is not even a case even allowed on 18.11.2014 subsequently for absence with no representation again was set aside.

Having regard to the above, the order no way sustains based on legal maxim ***actus curiae neminem gravabit*** to mean act of Court shall prejudice no man not sanctioned by law. Thereby, the revision petition is allowed by restoring the R.A.No.8 of 2014 to the file of the lower appellate Court with a direction to hear afresh the arguments of both sides within a week from the date of receipt of a copy of this order by left open to the respondents if at all to submit any written arguments and pass orders thereon, preferably, within not exceeding 30 days in disposing of the matter at any cost within two (2) months from today. It

is made clear to the revision petitioner that the lower Court need not serve any fresh notice for his appearance fixed on 16.08.2016 before the lower appellate Court to give the date therefrom.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 02.08.2016
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