

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.825 of 2016

ORDER:

This petition is filed under Article 227 of the Constitution of India challenging the orders dated 09.02.2016 in I.A.No.105 of 2015 in O.S.No.230 of 2015 on the file of Principal Junior Civil Judge Court, at Mancherial.

2. The contention of the learned counsel for the petitioner is two fold:

1. On 12.03.2015, the advocates of Mancherial courts boycotted the courts, therefore, the petitioner could not file his chief examination affidavit;
2. He further submitted that the trial Court having came to a conclusion that the advocates have boycotted the courts, ought to have give one more opportunity to the petitioner to file chief examination affidavit.

Per contra, learned counsel for the first respondent submitted that the petitioner has taken different stands, therefore, the petition is liable to be dismissed. In spite of service of notice, none appeared on behalf of respondents 2 to 5.

3. The facts leading to filing of the present revision petition are briefly as follows:

The petitioner herein filed O.S.No.230 of 2011 against the respondent for declarations to declare him as legal heir of late Dasari Chandraiah and direct the respondents to give 50% of share in the gratuity, provident fund and all other benefits from the Singareni Collieries and LIC policies Nos.682974166, 683365339, 684017108, 684032044, 685565743, 684043192 and 682765034. Respondents No.2 to 4 are the official respondents. The first respondent filed written

statement *inter alia* contending that the petitioner is not entitled for the relief of declaration. After framing of the issues, the suit was posted for trial on 12.03.2015. The trial Court dismissed the suit on the ground that the petitioner refused to give evidence. Hence, the present revision petition.

4. Now, the point that arises for consideration is:

Whether there are any justifiable grounds to set aside the orders dated 09.02.2016?

5. As rightly pointed out by the learned counsel for the respondent, in the affidavit itself it is mentioned that due to non-availability of the advocate, the petitioner could not file his chief examination affidavit before the trial Court. As per the averments made in the counter, the suit was dismissed as the petitioner refused to give evidence before the trial Court.

6. For better appreciation of rival contentions, it is not out of place to extract hereunder the relevant portion of Para 15 of the Order:

“The fact that the docket proceedings dated 12.03.2015 indicates that the advocates were abstaining the court and the petitioner/plaintiff was present and he refused to depose evidence.”

7. Even as per the orders of the trial Court, the advocates boycotted the court on 12.03.2015. The fact remains that the petitioner appeared before the trial Court and requested time to file the chief examination affidavit on the ground that his counsel was not available. The petitioner is claiming that he is the adopted son of late Chandraiah. While disposing the interlocutory applications, the Court shall not express any opinion with regard to the merits of the main case. It is a known fact in Telangana area, the advocates boycotted the courts for long time. As observed earlier, the advocates of Mancheriah have boycotted the courts on 12.03.2015. When the advocates have boycotted the courts, it may not be possible for the parties to file chief examination affidavit before the court concerned. It is not the case of

the first respondent that the petitioner has taken number of adjournments for filing of the chief examination affidavit. It is a known fact that in civil matters, parties are filing affidavits in lieu of recording chief examination in the open court. It is also a known fact that the parties expect presence of their counsel even at the time of cross-examination. While deciding the petitions of this nature, the approach of the Court shall be pragmatic and not pedantic. If the court dismisses the petitions on one ground or the other, the litigant public may feel that the court shut its door without giving reasonable opportunity to ventilate their legitimate and legal grievances. While deciding the petitions of this nature, the Court has to take into consideration the ground realities. If this revision petition is not allowed, it may not be possible for the petitioner to establish his right. Even if the petition is allowed, the same may not cause any prejudice to the first respondent, who is the contesting party. So far as respondent Nos.2 to 5 are concerned, they are only proforma parties.

8. Having regard to the facts and circumstances of the case, I am of the considered view that the order under revision suffers from irregularity, which warrants interference of this court under Article 227 of the Constitution of India. Accordingly, the point is answered.

9. In the result, this civil revision petition is allowed and the order dated 09.02.2016 in I.A.No.105 of 2015 in O.S.No.230 of 2011 on the file of the Principal Junior Civil Judge, at Mancheri is hereby set aside. Consequently, the suit in O.S.No.230 of 2011 is restored to its file. The trial Court is hereby directed to dispose of the suit as expeditiously as possible, preferably, within a period of six months from the date of receipt of copy of this order.

10. As a sequel, the miscellaneous petitions if any pending in this revision petition shall stand closed.

T.SUNIL CHOWDARY, J

April 27, 2016.

Rns

-