

HO NOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.5029 OF 2016

ORDER:

This Civil Revision Petition is filed challenging the order passed in I.A.No.191 of 2015 in I.A.No.521 of 2013 in O.S.No.9 of 2012 passed by II Additional District and Sessions Judge, Sangareddy, ordering notice by publication in Eenadu Hyderabad Edition dated 31-8-2016.

The only contention before this court in the present revision is that R.7 and R.8 are residents of U.S. and ordering publication of notice in District Edition Eenadu Telugu Daily has no circulation at U.S. would not serve any purpose and it does not amount to proper service and prayed to set aside the same.

At the stage of admission, it is reiterated. However, the counsel for the respondent Sri V.Vittal contended that no prejudice would be caused if the publication of notice is effected in Eenadu Telugu News paper Hyderabad edition since respondents 7 and 8 are now residing at Hyderabad. Hence, High Court cannot interfere with the discretionary order placing reliance of judgment reported in *BASANT SINGH AND ANOTHER v. ROMAN CATHOLIC MISSION*⁽¹⁾.

It is an admitted fact that R.7 and R.8 were residents of U.S. and now it is the contention of respondent that they are staying at U.S. temporarily and they came back and therefore, publication of notice in interlocutory application under order 5 Rule 20 in Eenadu Telugu Daily Edition, Hyderabad is sufficient.

¹ 2003 (1) ALT 1 (SC)

Thus, undisputedly, R.7 and R.8 stayed for some time at U.S. but no proof is filed to establish that they are presently residing at Hyderabad.

In the absence of any proof in view of admission of their stay at U.S., ordering notice by publication in Eenadu Telugu Daily Hyderabad Edition would not serve any purpose and it is nothing but circumventing provisions relating to service of notice. The intention of legislature is to intimate only about the pendency of the proceedings by effecting service under Order 5 Rule 20 or any other mode of services to receive summons or for any other reasons mentioned in Order 5 Rule 20 C.P.C. but ordering notice by way of service under 5 Rule 20 is not disputed but only contention is that such notice is published in any paper which is having circulation at the place where the respondents 7 and 8 are residing.

If the order passed by the trial court is suspended i.e., publication of notice in Hyderabad District Telugu of Eenadu Telugu Daily, it would not serve any purpose since it was not circulated at the place where R.7 and R.8 are residing.

Therefore, such order cannot be suspended and it is against the purport of order of substitute service. Learned counsel for the respondents placing reliance on a decision reported in *BASANT SINGH AND ANOTHER v. ROMAN CATHOLIC MISSION* (1st cited), contended that this court cannot interfere with the order passed under Order 5 Rule 20 of C.P.C.

No doubt, when the court exercised discretion in accordance with law, the court cannot interfere with but when court passed order not properly exercising discretion, the court can interfere exercising jurisdiction under Article 227 of Constitution of India. Here, Respondents

7 and 8 are residing in U.S. and no proof is produced about their return and stay at Hyderabad as on the date of ordering notice by substitute service under Order 5 Rule 20 of C.P.C. and therefore, ordering publication of notice in any news paper having its circulation in the area where the respondents 7 and R.8 are residing would service purpose. Therefore, while ordering notice in Eenadu Telugu Daily Hyderabad Edition, I deem it appropriate to direct the trial court to order to order notice by publication in any news paper having circulation in the areas where the respondents 7 and 8 are residing at U.S.

Hence, respondents are directed to furnish details of news paper being circulated within the area where respondents 7 and 8 are residing in U.S. and on furnishing such information, trial court is directed to order notice to be published in the paper having circulation where the respondents 7 and 8 are residing.

With the above direction, this Civil Revision Petition is disposed of.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Dated 16-11-2016.

Dvs.

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Dated 16-11-2016

Dvs