

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.2313 OF 2015

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful petitioner/plaintiff is directed against the orders, dated 19.01.2015, of the learned II Additional District Judge, Ranga Reddy District at L.B.Nagar, passed in C.M.A.no.30 of 2014 whereby the while dismissing the said C.M.A., the learned judge had confirmed the order and decretal order, dated 12.12.2012, of the learned Principal Junior Civil Judge, Ranga Reddy, passed in I.A.no.590 of 2012 in O.S.no.630 of 2010 filed by the petitioner/plaintiff under Order IX Rule 9 of the Code of Civil Procedure, 1908, seeking restoration of the suit which was dismissed for default on 25.06.2012 for non-appearance of PW1, the General Power of Attorney (GPA) Holder of the plaintiff, for cross examination.

2. I have heard the submissions of the learned counsel for the revision petitioner/plaintiff ("the plaintiff", for brevity). Though notices are served, none appears for the respondent/defendant. I have perused the material record.

3. Before proceeding further, it is necessary to refer to the pleadings of the parties.

The plaintiff brought the suit against the defendant for recovery of Rs.77,000/- with interest and costs. The defendant resisted the suit. The suit is filed by the plaintiff through a GPA holder. At the trial, the GPA holder had appeared as PW1 i.e., the

first witness of the plaintiff. On the day the suit was posted for cross examination of PW1, neither he nor the counsel for the plaintiff appeared before the trial Court. Therefore, the suit was dismissed for default. On that, the plaintiff filed an application for restoration of the suit and for setting aside the order of dismissal for default dated 25.06.20012 *inter alia* stating that on the said date he could not appear before the trial Court on account of the death of the mother of the counsel for the plaintiff. The defendant resisted the said application and denied the said averment in the affidavit of the GPA holder of the plaintiff.

4. On merits, the trial Court dismissed the petition *inter alia* holding that the death of the mother of the counsel does not prevent PW1 from appearing before the Court and that therefore there are no sufficient grounds to grant the relief.

5. The aggrieved plaintiff filed the aforementioned C.M.A. before the II Additional District Court and *inter alia* contended that the mother of the counsel died, but as PW1 is a close friend of the counsel, he had been to attend the funeral of the deceased mother of the counsel and that being not familiar with the legal proceedings, he could not properly state the facts in his supporting affidavit filed with the petition seeking restoration of the suit. However, the Court below by the order impugned in this revision dismissed the C.M.A., and confirmed the order of the trial Court. Having been aggrieved by the said orders, the plaintiff filed this revision. While reiterating his said case, the learned counsel for the plaintiff would contend that though apposite explanation could not be given in the original affidavit, the position was clarified

before the appellate Court and yet the appellate Court dismissed the CMA by not properly appreciating the facts and that the appellate Court had thus, erroneously refused to give a fair and reasonable opportunity to the plaintiff to have his case decided on merits and that if the plaintiff is not permitted to prosecute the suit after setting aside the default order passed in the suit, he would suffer serious and irreparable loss.

6. I have bestowed my attention to the facts and submissions. It is undisputed that PW1, the GPA holder, who was examined in part, failed to attend before the Court on the date fixed for his cross-examination. It is also undisputed that on that day, the mother of the plaintiff's counsel passed away. According to PW1, he had been to attend the funeral of the mother of the counsel being a friend of the family of his counsel. Further, the suit is filed for recovery of money pursuant to an agreement of sale. In the well considered view of this Court, it is just and fair to give an opportunity to the plaintiff to have his case decided on merits as such a course meets the ends of justice. Further, when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. Viewed thus, this Court finds that the plaintiff's request deserves to be accepted and that the plaintiff can be given an opportunity to have his case decided on merits and that therefore the order impugned brooks interference.

7. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, I.A.no.590 of 2012 in O.S.No.630 of 2010 on the file of the Court of the learned Principal

Junior Civil Judge, Ranga Reddy District at L.B.Nagar is allowed and the dismissal order for default passed in the suit on 25.06.2012 is set aside and the suit is restored to file. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

M. SEETHARAMA MURTI, J

Date:15.07.2016

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