

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION Nos. 4147 and 5097 of 2016

COMMON ORDER:

1) C.R.P.No.4147 of 2016 is filed, aggrieved by the order dated 25.07.2016 passed in I.A.No.500 of 2016 in O.S.No.326 of 2007 on the file of the Additional Senior Civil Judge, Tirupati, wherein an application filed under Section 151 C.P.C. to re-open the evidence of the defendants was dismissed.

2) C.R.P.No.5097 of 2016 is filed, aggrieved by the order dated 25.07.2016 passed in I.A.No.501 of 2016 in O.S.No.326 of 2007 on the file of the Additional Senior Civil Judge, Tirupati, wherein an application filed under Order VIII, Rule 1A read with Section 151 of C.P.C. to receive documents was dismissed.

3) Since the issue involved in both the Civil Revision Petitions filed under Article 227 of the Constitution of India are interconnected, they are being disposed of by this common order.

4) The facts in issue are as under:

5) Respondent Nos.1 to 5 herein filed O.S.No.326 of 2007 against the petitioner and others seeking partition of the suit schedule properties. Defendant No.1 filed his written statement on 18.01.2008. The said suit was posted on 23.06.2016 for adducing evidence of the defendant No.1. On the said date, the petitioner herein fell sick and as such he could not contact his advocate to give instructions so as to prepare his chief affidavit. Due to absence

of the petitioner herein, the trial Court closed the evidence of the defendants and posted the suit for arguments. On coming to know about the same, the petitioner filed an application under section 151 of C.P.C. to re-open the defendants' evidence and also filed another application seeking leave of the trial Court to receive documents. By an order dated, 25.07.2016 the trial Court dismissed both the petitions. Challenging the same, the present revisions are filed.

6) In spite of service of notice on the counsel appearing for the respondents/ plaintiffs, there is no representation on their behalf. Hence, heard the petitioner.

7) Learned counsel for the petitioner mainly submits that defendant No.1 could not attend only on 23.06.2016 and such absence is neither wilful nor wanton. It is submitted that as the suit is filed for partition, grave prejudice would be caused to the petitioner if an opportunity to adduce evidence is not given.

8) In *G.P.Srivastava v. R.K.Raizada and others*¹, the Apex Court held as under:

“The "sufficient cause" for non-appearance refers to the date on which the absence was made a ground for proceeding ex parte and cannot be stretched to rely upon other circumstances anterior in time. If "sufficient cause" is made out for non-appearance of the defendant on the date fixed for hearing when ex parte proceedings were initiated against him, he cannot be penalised for his previous negligence which had been

¹ (2000) 3 SCC 54

overlooked and thereby condoned earlier. In a case where the defendant approaches the court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits.”

9) As seen from the record, the above suit is filed for partition. After completing the plaintiffs’ evidence on 09.02.2016 the case was posted to 23.06.2016 for defendants’ evidence. It is to be noted that on that day, defendant No.1 could not contact his advocate to prepare the chief affidavit due to his ill health. Immediately on 29.06.2016 itself the petitioner filed application to re-open the evidence. In view of the above, the explanation given cannot be brushed aside. This Court is of the view that ends of justice would be met only if the petitioner - defendant No.1 is giving an opportunity to adduce evidence.

10) For the aforesaid reasons, both the revision petitions are allowed. There shall be no order as to costs.

11) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

15.11.2016

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