

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.4950 of 2016

ORDER:

The judgment debtor in E.P.No.72 of 2016 on the file of Court of Junior Civil Judge, Tadipatri, Ananthapur district is the petitioner in the present revision filed under Section 115 of Code of Civil Procedure.

2. Heard the learned counsel for the petitioner. Despite service of notice, none appeared for the respondent.

3. The respondent herein instituted O.S.No.43 of 2016 for a declaration that the petitioner herein is not his wife and for a permanent injunction to restrain her from claiming so and from entering into his house. On 31.3.2016, the said suit was decreed by the Court below. Thereafter, the respondent herein filed E.P.No.72 of 2016 for arrest of the judgment debtor/petitioner herein, alleging intentional violation of the terms of the decree. On 22.8.2016 the Executing Court issued notice to the petitioner/judgment debtor, while directing the application to be called on 7.9.2016. On 7.9.2016, the petitioner was set exparte and the matter was posted to 8.9.2016 and on which date, the decree holder filed affidavit in lieu of chief examination as P.W.1 and the learned Judge allowed the E.P., and issued arrest warrant against the petitioner herein. Thereafter, on 26.9.2016, the petitioner herein filed E.A.No.250 of 2016 under the provisions of Order 21 Rule 106 of CPC, praying to set aside the exparte order dated 7.9.2016 and to permit the petitioner to contest the E.P. The learned Judge, passed a docket order dated 30.9.2016, dismissing the said E.A. The validity of the said order is under challenge in the present revision.

4. It is contended by the learned counsel for the petitioner that the order under challenge is erroneous, contrary to law and the reasons assigned by the learned Judge for turning down the request of the petitioner are neither valid nor cogent. He further submitted that the learned Judge ought to have given an

opportunity to the petitioner to contest the E.P. having regard to the nature of controversy.

5. In the affidavit filed in support of E.A.No.250 of 2016, it is stated that on 7.9.2016, on which date the matter was posted for appearance of the petitioner, the petitioner was not in a position to appear before the Court due to sickness of her baby aged about 11 months, as such, the absence was neither intentional nor wanton, but beyond the control. A perusal of the docket order dated 30.9.2016, which is under challenge in the present revision shows that in the said order, the learned Judge observed that the petitioner did not furnish any proof in support of sickness of 11 months baby.

6. In the considered opinion of this Court, the said reason assigned by the learned Junior Civil Judge is highly unreasonable and cannot be sustained having regard to the nature of controversy in the present case. The learned Judge ought to have given opportunity to the petitioner to contest the E.P. on merits. In the considered opinion of this Court, ends of justice would be met if the petitioner is given opportunity to contest the E.P. on merits.

7. For the aforesaid reasons, the C.R.P. is allowed, setting aside the order dated 30.9.2016 passed in E.A.No.250 of 2016 in E.P.No.72 of 2016 in O.S.No.43 of 2016 and Docket order dated 8.9.2016 passed in E.P.No.72 of 2016 and the matter is remanded to the Court below for fresh consideration, in accordance with law, after giving opportunity to the petitioner as well as respondent. As a sequel, the Miscellaneous Petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 11.11.2016
DA

THE HON'BLE SRI JUSTICE A.V.SESHA SAI



C.R.P.No.4950 of 2016

11.11.2016