

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.3397 OF 2016

ORDER:

This petition is filed under Section 115 of Code of Civil Procedure (for short, hereinafter referred to as "C.P.C.") to set aside the order dated 03.06.2016 passed by the Junior Civil Judge, Ponduru in I.A.No.70 of 2016 in I.A.No.27 of 2015 in O.S.No.46 of 2001.

The petitioner filed a petition before the trial Court under Order IX Rule 7 of C.P.C. to set aside the exparte order dated 14.10.2011 passed in I.A.No.27 of 2015 (I.A.No.1139 of 2010), which was filed under Section 28 (c) of Specific Relief Act for execution of a registered sale deed in terms of decree passed in O.S.No.46 of 2001.

It is the case of the petitioner that he is residing at Visakhapatnam, earlier he resided at Konchada village of Srikakulam. But notice was ordered to the petitioner to the address at Konchada village in Ponduru Mandal, but the same was not served and returned with an endorsement that the petitioner herein was shifted to other place about 10 years ago. Later, notice by substitute service under Order V Rule 20 of C.P.C. was ordered and allowed. Accordingly, notice was published in a local newspaper. On the strength of the same, the Court satisfied that there is a sufficient service and set the petitioner exparte. The said petition was pending till 24.06.2016, but before passing order on 24.06.2016, the petitioner filed a petition to set aside the exparte order passed against him. The Trial Court dismissed the said petition on 03.06.2016 only on the ground that the matter was already disposed of.

As seen from the docket order produced before this Court as on the date of dismissal of the petition on 03.06.2016, I.A.No.27 of 2015 was pending and no final order has been passed. Therefore, the order passed by the trial Court dismissing the petition on the ground that the petition was not pending is erroneous on the face of the record and the

same liable to be set aside.

Accordingly, the order passed by the trial Court in I.A.No.70 of 2016 in I.A.No.27 of 2015 in O.S.No.46 of 2001 dated 03.06.2016 is set aside by remanding the petition to the trial court with a direction to consider the grounds urged in the petition to set aside the exparte order dated 14.10.2011 and pass appropriate orders afresh in accordance with law.

With this, the civil revision petition is disposed of. No order as to costs. The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:15.07.2016

Note: Issue C.C. by 18.07.2016.

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