

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION No.4366 of 2016

ORDER:

This Civil Revision Petition is filed by the petitioners/defendants aggrieved by the order dated 20-01-2016 in I.A.No.32 of 2015 in I.A.No.620 of 2014 in O.S.No.37 of 2008 passed by learned V Additional District Judge, Rayachoty. I.A.No.32 of 2015 was filed by the petitioners/defendants under Order 9 Rule-9 C.P.C. to set aside the dismissal order in I.A.No.620 of 2014 and said petition was dismissed in the impugned order dated 20-01-2016. Hence, the instant C.R.P.

Personal notice was ordered to the respondent/plaintiff. Learned counsel for the petitioners produced proof of service by filing the postal acknowledgment. There is no representation for respondent/plaintiff. Hence, heard learned counsel for the petitioners.

O.S.NO.37 of 2008 was filed by the respondent/plaintiff against the petitioners/defendants seeking the relief of a direction to the 1st defendant to execute registered sale deed in favour of the plaintiff. The submission of learned counsel for the petitioners is that matter was posted for the evidence of defendants on 17-09-2014 on costs of Rs.25/- and as the 1st defendant was suffering with Malaria fever and body pains since 15 days prior to 17-09-2014, he could not attend the Court on 17-09-2014 and could not file his chief affidavit, his counsel paid costs of Rs.25/- and prayed for time. But the trial

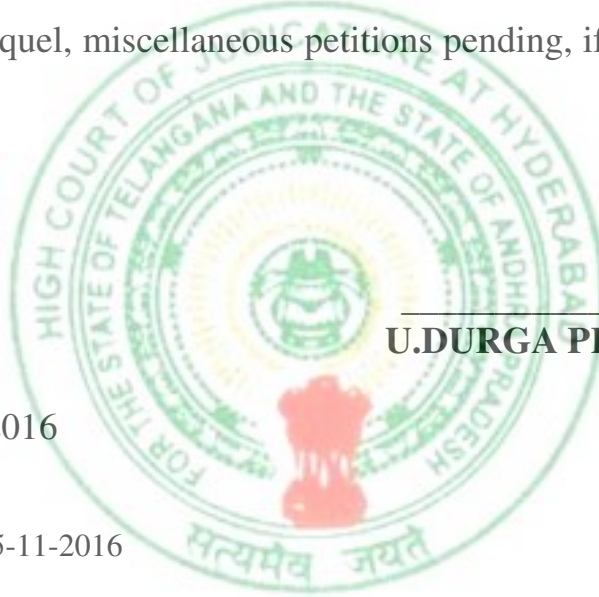
Court was pleased to close the evidence on 17-09-2014. Therefore, the petitioners/defendants filed I.A.No.620 of 2014 seeking to re-open the suit from the stage of arguments and permit the petitioners/defendants to adduce evidence. Learned counsel for the petitioners further submitted that while so, on 09-12-2014 I.A.No.620 of 2014 was dismissed for non-representation of the matter. Aggrieved by the said order, the petitioners/defendants filed I.A.No.32 of 2015 for restoring I.A.No.620 of 2014. The submission of learned counsel for the petitioners was that on 09-12-2014 as the petitioners counsel was busily engaged in cases, he instructed the 1st petitioner/1st defendant to attend the Court and seek adjournment. But unfortunately, the 1st petitioner could not attend the Court as he was suffering with bodily pains, cold and fever since the night of 08-12-2014. He also could not pass the information about his ill-health to his counsel and therefore, on 09-12-2014 I.A.No.620 of 2014 was dismissed for default and his absence on 09-12-2014 was neither willful nor due to negligence, but due to his ill-health only. Learned counsel thus submits that I.A.No.620 of 2014, which was dismissed for default needs to be restored to file, as the petitioners have good case in the suit and therefore, I.A.No.620 of 2014 may be restored.

It is seen that the suit is one for specific performance of suit agreement dated 18-02-2008, wherein valuable rights of the parties are at stake and therefore, this Court is of the considered view that

I.A.No.620 of 2014 needs to be restored to file. Further, as stated supra, there is no representation for the respondent in C.R.P., though notice was served on him.

In the result, Civil Revision Petition is allowed and order dated 20-01-2016 in A.No.32 of 2015 is set aside and said petition is allowed. Consequently, I.A.No.620 of 2014 is restored to file with a direction to the trial Court to dispose of I.A.No.620 of 2014 on merits within three weeks from the date of receipt of a copy of this order.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.



U.DURGA PRASAD RAO, J

Date: 11-11-2016

Note:

Issue C.C. by 15-11-2016

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