

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

C.R.P. No.5602 OF 2016

ORDER:

Vide the present petition, the petitioners seek a direction thereby setting aside the order dated 19.7.2016 passed in E.A. No.63 of 2016 in EP No.38 of 2015 in O.S No.456 of 2003 on the file of Principal Junior Civil Judge, Sattenapalli, Guntur District.

The case of the petitioner before the court below is that on 13.08.2015, the case was posted for their appearance. Due to typhoid fever, petitioner No.1 could not appear before the said Court. Petitioner No.3 did not attend the court as he was attending Petitioner No.1. Consequently, an ex parte order against them was passed by the trial court. There is no intentional default on their part for their non-appearance before the said Court. Thus seek to set aside the ex parte order dated 13.08.2015 passed against them.

After seeking reply from the other side, the learned judge has put a point for determination that whether the petitioners are entitled for the relief they sought for in the petition?

The learned judge recorded that plea of the petitioners was that they could not attend on 13.8.2015 as petitioner No.1 was attacked with typhoid fever and the petitioner No.3 had attended petitioner No.1. It shows that the petitioners were in the knowledge of date of hearing i.e. on 13.08.2015. Whereas, the counsel for the petitioner argued before the trial court that when the petitioners have knowledge of ex parte order, then they were arrested and produced before the trial court on 29.02.2016 and

immediately they filed petition on the same day. Thus, the claim of the petitioners was within the limitation as per order XXI Rule 106 (3) of CPC.

On a perusal of the order dated 19.7.2016, the learned judge has specifically mentioned that the petitioners/Judgment debtors were set ex parte on 13.8.2015 in view of the Order XXI Rule 106 (3) of CPC. However, they failed to move the application and filed the petition after four months of passing of the ex parte order.

CRP.MP.No.6559 of 2016 filed with the present petition, wherein, stated that the petitioners were not informed about the result of the appeal in time by their erstwhile advocate, therefore they could not present the second appeal before the Court within the time. If the counsel of the petitioners did not inform them, they may sue the counsel otherwise, but they cannot file this type of petition.

Thus find no merit in the instant petition I find no discrimination in the order dated 19.07.2016 passed by the Principal Junior Civil Judge, Sattenapalli, Guntur District.

Accordingly, this C.R.P. is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE SURESH KUMAR KAIT.

Date : 15-11-2016

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