

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.4237 of 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed challenging the Order in I.A.No.489 of 2016 in O.S.No.98 of 2010 passed by XIII Additional Chief Judge (FTC), City Civil Court, Hyderabad, dismissing the petition filed under Order 9 Rule 7 r/w 151 of Code of Civil Procedure (for short 'CPC') to set aside the *ex parte* Order dt.13.04.2010 against defendant No.6/petitioner herein.

2. The petitioner filed petition in I.A.No.489 of 2016 before the trial Court to set aside the *ex parte* Order dt. 13.04.2010 on the ground that no notice was served except affixture of notice to the door at conspicuous place. While accepting the affixture of notice to the door, the trial Court dismissed the petition holding that service of Notice by affixture is sufficient service.

3. The present Civil Revision Petition is filed challenging the same on the ground that affixture of notice is a final option and without exhausting first three options under Order 5 Rules 10 to 16 of CPC, affixture of notice cannot be held to be sufficient service. But, the trial Court did not consider the same in proper perspective.

4. Notice sent to respondent was served, but none appeared on his behalf.

5. During hearing, Sri Nazir Ahmed Khan, learned counsel for revision petitioner would contend that directly affixture of a notice in the absence of exhausting other modes of service as contemplated under Order 5 Rule 8 of CPC, the service by affixture cannot be a sufficient service. Order 5 Rule 9 of CPC prescribed various mode of service of notice. According to sub rule (1) of Rule 9 of CPC, where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court. The other three modes of procedures are deals with the sending of summons by the Court in the manner directed by it and by registered post. As per Rule 15 of CPC, service of notice on adult member of the family i.e., personal service, and Rule 16 of CPC contemplates obtaining of acknowledgment after serving of notice on the person and when the defendant refuses to accept service or cannot be found, where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of

his being found at the residence within a reasonable time and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person, if any, by whom the house was identified and in whose presence the copy was affixed.

6. Thus, the alternative mode of affixture under Order 5 Rule 17 of CPC can be invoked in the circumstances mentioned therein i.e., when the summons could not be served, despite exercising of due diligence and the defendant cannot be found within a reasonable time etc., as contemplated under Order 5 Rule 17 of CPC. Therefore, before accepting sufficient service, the Court has to record its satisfaction about compliance of all other conceivable modes of service, as contemplated under Order 5 Rule 17 of CPC and other Rules i.e., Rule Nos. 10 to 16. But, the endorsement of the process server is silent with regard to the requirements under Order 5 Rule 17 of CPC justifying affixture of notice to the outer door of the premises of the defendant where the defendant ordinarily resides or works for gain. Therefore, without exhausting other modes of service,

affixture of notice is not a proper service. But, the trial Court did not consider the requirement to be satisfied under Order 5 Rule 17 of CPC and passed the impugned Order. Hence, the Order passed by the trial Court is erroneous on the face of record as the trial Court failed to exercise its jurisdiction that vested on it in setting aside the *ex parte* order passed by the Court in I.A.No.489 of 2016 in O.S.No.98 of 2010. Therefore, the *ex parte* Order dt. 13.04.2010 passed by the trial Court in I.A.No.489 of 2016 is hereby set aside.

7. In the result, this Civil Revision Petition is allowed setting aside the Order dt. 06.08.2016 in I.A.No.489 of 2016 in O.S.No.98 of 2010 on the file XIII Additional Chief Judge (FTC), City Civil Court, Hyderabad. No costs.

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

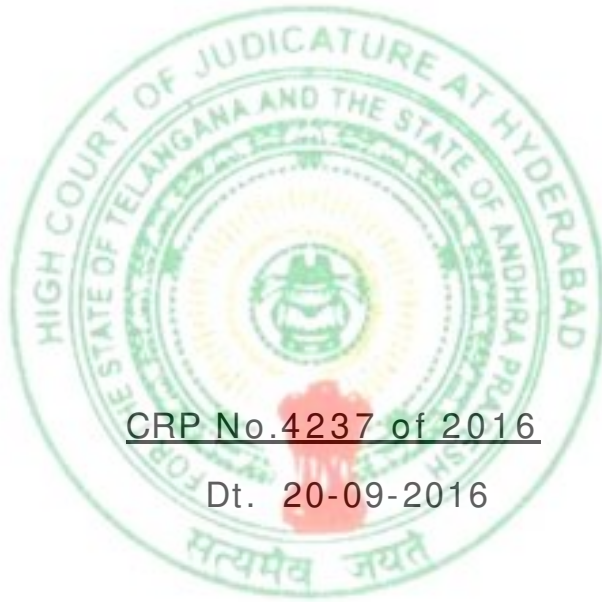
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M. SATYANARAYANA MURTHY, J

Date: 20-09-2016.

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Dt. 20-09-2016

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