

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

[*Special Original Jurisdiction*]

WEDNESDAY THE EIGHTH DAY OF NOVEMBER
TWO THOUSAND AND SEVENTEEN

PRESENT

HONOURABLE JUSTICE D.V.S. S. SOMAYAJULU

CMA.No. 1068 OF 2006

Between:

K. Bheem Shanker & Anr. ... Appellants

V/s.

Chavan Namdev ... Respondent

Counsel for the appellants : Sri K. B. Ramanna Dora

Counsel for the Respondent : Sri Palle Sriharinath

The court made the following: [Judgment follows]

HONOURABLE JUSTICE D.V.S.S. SOMAYAJULU

CMA.No. 1068 OF 2006

J U D G M E N T :

This is an appeal filed against the orders dated 27/09/2006 passed in I.A.No. 537 of 2006 in M.V.OP.No. 42 of 2002 by the II-Additional District and Sessions Judge [FTC], Medak at Sanga Reddy.

2. The brief facts of the case are that MV.OP.No. 42 of 2002 is filed under the provisions of the Motor Vehicles Act, claiming compensation for the fracture of both bones of right leg, contusion and abrasions over the body of respondent-claimant in a motor vehicle accident occurred on 13/4/1998 at 14:00 hours near Shivampet village outskirts.

3. When the matter is posted to 11/8/2006 for the evidence of the respondents, as the counsel for the respondents sought time to introduce the evidence, due to personal inconvenience. The learned trial court closed his evidence, heard the matter and proceeded to pronounce the judgment on merits. Within thirty days therefrom the

respondents filed I.A.No. 537 of 2006 in MV.OP.No. 42 of 2002 under Order-9, Rule-13 read with section 151 of CPC to set aside the judgment and decree passed in OP.No. 42 of 2002, dated 11/8/2006. However, the trial court held that the said order is passed is not an ex-parte order and that there are substantial evidence on record, therefore, the trial court held that the petition is not maintainable and hence the same is dismissed. Aggrieved by the said order, the present Civil Miscellaneous Appeal is filed.

4. Heard the learned counsel for the appellants and the learned counsel for the respondent.

5. The short and simple point that arises for consideration in this case is that whether the order dated 11/8/2006 is an order having the effect defence evidence ex-parte. The learned counsel for the respondent argued that it is not an ex-parte order and it is an order under Order- 17 [3], Rule-2 of CPC which empowers the Court to proceed with the matter in the absence of the parties or their counsel.

6. On the other hand, learned counsel for the appellants argued that the petition under Order-9, Rule-13 of CPC is maintainable and that

the order 17 itself directs the Court to proceed under Order-9.

Consequently he states that the application under Order-9, Rule-13 of CPC is maintainable.

7. Learned counsel also relied upon the two judgments of the learned Single Judge of this Court reported in **NAMBURI CHENNA REDDY AND ORS. V/s. DEVIREDDY KOTA REDDY AND ORS** ¹, and **SATYAMMA AND ANR. V/s. G. LALITHA BAI** ².

8. Heard, perused the material placed on record. It is clear that 11/8/2006 the trial court passed the following order :

“ After hearing arguments of both sides this Court come to conclusion that already reasonable opportunity was given for adducing evidence of petitioner/respondent. Petitioner/respondent counsel not pursued the case and there is no representation on their behalf. Once vakalath is filed, it is duty of the counsel to follow up the case.”

“ The petitioner/respondent counsel filed this petition after a gap of one month clearly shows that the petitioner/respondent has not pursued the case even after 11/8/2006. In this O.P. already PW-1 and PW-2 were examined, the petitioner/respondent cross-examined them, then how can the order of this Court is ex-parte order. The citations filed by the petitioner/respondent counsel not at all relevant to this case. The facts of the case are different and not at all applicable to this case, I hold that the order passed by this Court is not an ex-parte order.”

¹) 2006 [2] ALT-369

²) 2006 [3] ALT-420

9. The learned counsel for the appellant is right in pointing out Order-17, Rule-3 has a proviso which is added for the State of Andhra Pradesh which states that in case of default under Rule-3 or Rule-2, the Court will proceed according to Rule-2 [Proviso to Rule-3]. Order-17, Rule-2 states that if any party fails to appear on a day fixed the Court may proceed with the suit in one of the modes directed by Order-9.

10. Order-9 prescribes the procedure where the plaintiff appears and the defendant does not appear. Under Order-9, Rule-6, when the plaintiff appears and the defendant does not appear the court has to set the defendant ex-parte and proceed with the matter. In turn, Order-9, Rule-13 of CPC empowers the defendant against whom a decree is passed ex-parte to get it set a side, if he is able to prove that he is prevented by sufficient cause from appearing when the suit is called for hearing. This reasoning is supported by the decision of this court in **SATYAMMA 'S** case [supra-2].

11. For all the above reasons, I am of the opinion that the application under Order-9, Rule-13 is maintainable and the cause

mentioned therein is also “sufficient cause” to set aside the default order.

The reason mentioned for non-appearance is accepted.

12. For all these reasons, this Civil Miscellaneous Appeal is allowed and the orders dated 27/09/2006 passed in I.A.No. 537 of 2006 in M.V.OP.No. 42 of 2002 by the II-Additional District and Sessions Judge [FTC], Medak at Sanga Reddy are set aside. No costs. In the interest of justice, the MVOP.No. 42 of 2002 is restored to file. The trial court is directed to proceed with the matter and dispose of the case at an early date.

13. As a sequel, miscellaneous petitions if any, pending in this CMA shall stands disposed of.

JUSTICE D.V.S.S. SOMAYAJULU

HONOURABLE JUSTICE D.V.S.S. SOMAYAJULU



Date: 08/11/2017
Circulation No.. 263
Court Master: I s L