

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.5050 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/defendant No.3, assailing the order, dated 28.08.2017, in Interlocutory Application No.591 of 2017 in Original Suit No.35 of 2010, passed by the learned Principal Senior Civil Judge, Chittoor, wherein the petition filed under Order IX Rule 7 CPC, to set aside the *ex parte* order, dated 08.03.2010, was dismissed.

2. Respondent No.1/plaintiff filed O.S.No.35 of 2010 for partition of the plaint scheduled property and the case was posted to 08.03.2010 for appearance of the petitioner herein and for filing written statement. It is said that in the year, 2009, petitioner was attacked with severe jaundice and was taking treatment in Tirupati under the observation of a Gastroenterologist for long time and on the advice of the doctor, he took bed rest for a long period. As a result of which, he could not engage an Advocate and also file written statement within the time fixed by the Court. He would submit that any order passed would cause great prejudice to him and hence seeks the relief.

3. It is to be noted that the *ex parte* order was passed in the month of March, 2010. Seven years later, the present application

came to be filed to set aside the said *ex parte* proceedings. By an order, dated 28.08.2017, the trial Court dismissed the said application. Assailing the same, the present revision came to be filed.

4. As seen from the affidavit filed in support of the petition before the trial Court, the petitioner was aware that the case was posted to 08.03.2010. Though he was aware about the date of posting of the case, no explanation is forthcoming as to why he kept quiet for seven long years. The affidavit is bereft of any reason. Hence, I see no reason to interfere with the order passed by the trial Court.

5. At this stage, learned counsel for the petitioner submits that in view of the judgment of this Court in *K.Alivelamma v. K.Suryanarayana and others*¹, petitioner is entitled to participate in the proceedings from the stage at which she filed the application, but cannot be permitted to put the hands of the clock back by permitting her to file written statement and recalling the witnesses, who were already examined.

6. It is always open to the petitioner to avail the remedy, if any, available under law, by making an application before the concerned Court.

¹ 2007(4) ALT 430

7. Accordingly, the Civil Revision Petition is disposed of.

Consequently, Miscellaneous Petitions, if any, pending in this revision petition shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

Date:06.10.2017
INL

