

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.53 OF 2017

JUDGMENT:

This civil miscellaneous appeal is filed under Order XLIII Rule 1 of CPC challenging the order dated 02.12.2016 in E.A. No.378 of 2016 in E.A. No.486 of 2015 in E.P. No.95 of 2012 in O.S. No.630 of 2009 on the file of the Court of Additional Senior Judge, Tirupati.

2. Heard the learned counsel for the appellant-claim petitioner and the learned counsel for the first respondent-decree holder.

3. A perusal of the record reveals that the first respondent filed O.S. No.630 of 2009 against the respondent Nos.2 to 8 for recovery of the money under a chit transaction. After full-fledged trial, the suit was decreed on 08.6.2011. The first respondent filed E.P. No.95 of 2012 for realisation of the decretal amount by sale of the attached property. While the things stood thus, the appellant herein filed E.A. No.486 of 2015 under Order XXI Rule 58 of CPC claiming title over the property attached in O.S. No.630 of 2009. For one reason or the other, on 28.9.2016, neither the appellant herein nor his counsel present. Having no other alternative, the executing court dismissed E.A. No.486 of 2015 on 28.9.2016. On 14.10.2016, the appellant filed E.A. No.378 of 2016 to set aside the order dated 28.9.2016 and restore E.A. No.486 of 2015. By the impugned order dated 02.12.2016, the executing court dismissed E.A. No.378 of 2016 on the sole ground that the appellant filed the restoration petition with an intention to drag on the E.P. proceedings.

4. The record further reveals that the appellant filed E.A. No.378 of 2016 within the period of limitation. The appellant has assigned reasons much less cogent and valid reasons for non-appearance of his counsel before the executing court on 28.9.2016. Simply because the matter was unrepresented on a single day itself, is not a valid ground to dismiss the claim petition. While disposing this type of petitions, the approach of the court must be pragmatic and not pedantic. If the petition is dismissed, it may not be possible for the appellant to ventilate his legitimate grievances. Even if the petition is allowed, the same may not cause any prejudice to the first respondent-decree holder.

5. Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to allow the appeal.

6. In the result, the civil miscellaneous appeal is allowed, setting aside the order dated 02.12.2016 in E.A. No.378 of 2016. Consequently, E.A. No.486 of 2015 in E.P. No.95 of 2012 in O.S. No.630 of 2009 on the file of the Court of Additional Senior Judge, Tirupati is restored. Miscellaneous petitions, if any pending in this miscellaneous appeal, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 02.2.2017

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