

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2108 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed assailing the Order Dt.24.03.2017 in I.A.No.361 of 2017 in OP No.647 of 2015 passed by XII Additional Chief Judge, City Civil Court, Secunderabad, dismissing an application under Order 9 Rule 7 CPC.

It is the case of the petitioner that he is a pastor, who is propagating Christianity in the rural areas of Ninamabad District and thereby no notices were served upon him to appear before the Tribunal in OP No.647 of 2015, but he was set *ex parte*. It is his case that the respondent i.e., owner of the vehicle, remained *ex parte* and the insurance company contested the matter on the ground that the policy produced by the claimants is not tallying with the policy of insurance company. Therefore, the petitioner would be put to serious loss in case any award is passed against him being the alleged driver of the car and the vehicle involved in the accident and requested the Tribunal to set aside the *ex parte Order* dt. 19.12.2016 passed by the Tribunal.

The Tribunal clearly held that the notices in the OP were served on the wife of the petitioner and also a notice by registered post with acknowledgment due was served and a postal acknowledgment evidencing the receipt of notice is also placed on record. Based on the endorsement of the process server and postal acknowledgment, the Tribunal concluded that

the notices were served on the petitioner and thereby declined to set aside the Order dt.19.12.2016.

The present revision is filed on the ground that the petitioner is only a pastor and thereby serving of notice on him does not arise in the OP and that too the petitioner is no way responsible for the accident and he was not the driver, but working as pastor propagating Christianity in the rural areas of Nizambad District and in case no opportunity is afforded to the petitioner, he will be put to serious loss and therefore sought to set aside the *ex parte* Order dt. 19.12.2016 passed by MACT-cum-XXVII Additional Chief Judge, City Civil Court, Secunderabad.

The only contention of the learned counsel for the petitioner before this Court is that when no notices were personally served on the petitioner, petitioner is entitled to get the *ex parte* order set aside under Order 9 Rule 7 CPC and the question of serving noticed on the petitioner does not arise either by post or personally as he is moving in the rural areas of Nizamabad District propagating Christianity. Therefore, the said service is neither true nor correct and prayed to set aside same at least to afford an opportunity to protect his interest in the claim for Rs.20,00,000/-.

As per Order IX Rule 7 CPC, on the application of defendant at or before hearing, the Court finds any good cause for his non appearance on his previous date of adjournment, the Court may upon such terms directs as to costs or otherwise, be

heard in answer to the suit and as if he appeared on the day fixed for hearing. But, Rule 6 of Order IX CPC prescribes the procedure when only plaintiff appears:

(1) where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then

(a) when summons duly served: if it is proved that the summons was duly served, the Court may make an order that the suit be heard *ex parte*;

(b) when summons not duly served: if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant;

© When summons served, but not in due time: if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall, postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant".

The Court passed an Order by exercising power under Order IX Rule 6 CPC holding that the service on the wife, who is the elder member of the family, is sufficient service and similarly service by registered post with acknowledgment due is also proper service. But now the question is whether the notice is sufficient to pass an Order by exercising power under Order 9 Rule 6 CPC.

Order V Rule 15 CPC prescribes certain procedure for service of notices and according to it, in any suit the defendant is absent from his residence at the time when the service of summons 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 he has no agent empowered to accept service of the summons on his behalf, service may be made on

any adult member of the family, whether male or female, who is residing with him.

The explanation annexed to it further made it clear that a servant is not a member of the family within the meaning of the rule. The AP Amendment to Rule 15 CPC, substituted the words, the defendant is absent' in place of the 'defendant cannot be found'.

Here in this case, according to the admission of the petitioner, the petitioner is a pastor propagating Christianity in the rural areas of Nizamabad District and thereby finding him at his residence at given address when notices were sent is a difficult task to serve notice personally. In such case, by following the AP Amendment to Order V Rule 15 CPC, service of notice on the elder member of a family is sufficient since wife is a female member of the family and therefore, the findings of the Tribunal is in accordance with law.

Similarly, a notice by Registered Post with acknowledgment due was also sent. When a notice was served by registered post and if receipt of the notice is acknowledged by the addressee, it is sufficient service under Order V Rule 9 CPC. Order V Rule 9 (3) CPC says that the service of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the defendant or his agent empowered to accept the service or by speed post or by any other courier services as are approved by the High Court or by the Court referred in Sub-Rule (1) or by

any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court.

Here, notices were sent in the OP by registered post with acknowledgment due and a postal acknowledgment was received back by the tribunal acknowledging receipt of the notice in the OP by the addressee i.e., the petitioner. When notices were served on two modes i.e., under Order V Rule 9 (3) CPC and Order V Rule 15 CPC, the Tribunal has no other alternative except to conclude that notices were served and supported the order passed by the Tribunal exercising power under Order IX Rule 6 CPC. Even otherwise when notice by registered post was sent to correct address of petitioner, the Court may draw presumption about service under Section 27 of General Clauses Act. Though it is rebuttable, no material is produced to dispel the presumption. When notices were served and no sufficient cause was shown by the petitioner for his non-appearance before the Tribunal on the day fixed for his appearance or on any other day, the Tribunal is bound to dismiss the petition.

The main contention of the petitioner is that he will be the sufferer if any award is passed against him since the owner remained *ex parte* and the insurance company disowning its liability under the policy, the Court or Tribunal is bound to decide the matter in accordance with law not on equities or any sympathy. Therefore, the request of the petitioner to set aside the *ex parte* order on the ground that he is going to suffer a lot

is not a ground when the tribunal recorded his specific finding that notices were served long back. Therefore, I find no ground to interfere with the findings of the Tribunal by exercising power under Article 227 of the Constitution of India and thereby, this petition is liable to be dismissed as it is devoid of merits.

Accordingly, this Civil Revision Petition is dismissed confirming the Order dt. 24.03.2017 in I.A.No.361 of 2017 in OP No.647 of 2015 passed by XII Additional Chief Judge, City Civil Court, Secunderabad

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

M. SATYANARAYANA MURTHY, J

Date: 24-07-2017.
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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