

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

C.R.P. Nos.6301 and 6319 of 2016

COMMON ORDER:

These two revision petitions are filed against the common order dated 16.11.2016 passed in I.A. Nos.595 and 596 of 2014 in O.S. No.44 of 2015 by the XVI Additional District and Sessions Judge, Nandigama.

2) Heard both sides in both the revisions and perused the impugned common order of the lower Court.

3) The petitioner/ 6th defendant in O.S. No.44 of 2015, has filed I.A. No.595 of 2016, under Section 5 of Limitation Act, to condone the delay of 241 days in filing the petition to set-aside the *ex parte* order dated 30.09.2015 and also filed I.A. No.596 of 2016, under Order IX Rule 7 C.P.C, to set aside the *ex parte* order dated 30.09.2015. The petitioner/ 6th defendant having received the suit summons failed to attend before the Court on 30.09.2015 or file the written statement within the stipulated time, and therefore, the *ex parte* order was passed.

4) The lower Court by the impugned common order dated 16.11.2016 dismissed both the applications with the observation that the attitude of the petitioner/ 6th defendant in not appearing before the Court pursuant to the suit summons dated 30.09.2015, apparently discloses that the

petitioner was reluctant to appear on the said date of hearing and did not even immediately approach the Court explaining the reasons for her non-appearance on 30.09.2015 and took no steps till filing of the petition in 2016. Thereby, there are no grounds nor any sufficient cause is shown for her non-appearance to set-aside the *ex parte* order and to receive the written statement by granting leave.

5) Undisputedly, the suit is filed for partition. In a suit for partition between the family members or co-owners or co-sharers, as the case may be, the defendants also, on bar with the plaintiff, if at all, entitled to any extent of share in the property along with the claim of the plaintiff. Once such is the case, the trial Court should have received the written statement of the 6th defendant, taking note that the other defendants also filed the written statements and by then the trial is not even commenced by setting aside the *ex parte* order dated 30.09.2015 under Order IX Rule 7 C.P.C. The Apex Court in ***Balraj Taneja and another vs Sunil Madan and another***¹ observed that even defendant remained *ex parte* earlier is entitled to participate in the proceedings subsequent to that stage though he could not revert the clock back.

6) Once such is the case, the petitioner/ 6th defendant is entitled to participate in the trial, which has not even commenced and it is also necessary to consider the

¹ AIR 1999 SC 3381

available evidence, entitlement of the plaintiff's suit claim besides other defendants since contesting. Therefore, to subserve the ends of justice, the impugned common order dated 16.11.2016 passed in I.A. Nos.595 and 596 of 2015 in O.S. No.44 of 2015 by the XVI Additional District and Sessions Judge, Nandigama, is liable to be set-aside.

7) Accordingly, the Civil Revision Petitions are allowed by setting aside the *ex parte* order dated 16.11.2016 and permitting the petitioner/ 6th defendant to participate in the proceedings and to file the written statement, subject to payment of costs of Rs.16,000/- payable by the 6th defendant to the plaintiff before the lower Court within one week from the date of receipt of copy of this order.

8) Consequently, miscellaneous petitions, if any pending in these revisions shall stand closed. There shall be no order as to costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 22.12.2017
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Date:22.12.2017

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