

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.4871 of 2017

O R D E R

The petitioner is the first defendant in O.S.No.636 of 2014 on the file of the learned I Additional District Judge, Ranga Reddy District at L.B.Nagar. He was set *ex parte* on 18.06.2015. He filed I.A.No.294 of 2017 in the suit under Order 9 Rule 7 CPC to set aside the order dated 18.06.2015 setting him *ex parte*. By order dated 20.07.2017, the trial Court dismissed the said I.A. Aggrieved thereby, he is before this Court by way of this revision petition filed under Article 227 of the Constitution.

By order dated 22.09.2017, this Court granted interim stay of further proceedings in the suit taking note of the fact that though the petitioner/first defendant was set *ex parte* in 2015, the other defendants were set *ex parte* only in March, 2017.

Heard Sri A.Sudershan Reddy, learned senior counsel appearing for Sri G.Madhusudhan Reddy, learned counsel for the petitioner/first defendant, and Sri Ch.Ramesh Babu, learned counsel for the first respondent/plaintiff. Respondents 2 and 3, being the second and third defendants in the suit, are not necessary parties to this adjudication.

Parties shall hereinafter be referred to as arrayed in the suit.

O.S.No.636 of 2014 was filed for a declaration that the plaintiff was the absolute owner of the suit schedule property; that the registered sale deed dated 12.07.1999, the registered agreement-cum-general power of attorney dated 06.11.2000 and the registered sale deed dated 02.05.2001 were null and void and not binding on the plaintiff; and to grant a perpetual injunction

restraining the defendants from interfering with the possession and enjoyment of the plaintiff over the suit schedule property. The first defendant entered appearance before the trial Court but did not file his written statement within time and was thereafter set *ex parte* vide the order dated 18.06.2015.

In the affidavit filed in support of the subject I.A., the first defendant stated that due to severe sickness of his mother and other personal problems, he could not file his written statement on 18.06.2015. He stated that non-filing of the written statement by him on the said date was neither intentional nor deliberate and that he was filing the subject I.A. along with his counter and written statement.

The plaintiff contested the I.A. by filing a counter, wherein she pointed out that the first defendant leisurely filed the subject I.A. at his own convenience after a period of two years. She further pointed out that he had not filed any documentary evidence in support of the reason cited and prayed for dismissal of the I.A.

Perusal of the order under revision reflects that after the first defendant entered his appearance, the trial Court adjourned the matter four times, i.e., on 10.07.2014, 10.10.2014, 29.12.2014, 27.02.2015 and only thereafter, on the fifth date, i.e., 18.06.2015, the first defendant was set *ex parte*.

Sri A.Sudershan Reddy, learned senior counsel, would submit that the first defendant should be given an opportunity to contest the plaintiff's claim as the other defendants have also been set *ex parte* in 2017. Sri Ch.Ramesh Babu, learned counsel, would counter this argument by pointing out that the first defendant cannot be permitted to file his written statement at this late stage, ignoring the statutory mandate of Order 8 Rule 1 CPC. He would

further point out that the suit underwent adjournments for nearly a year and it was only thereafter that the first defendant was set *ex parte*. He would therefore assert that the first defendant cannot be permitted to file his written statement at this late stage. He would however state that he has no objection to the first defendant participating in the suit proceedings now, despite being set *ex parte*, to the exclusion of his right to file a written statement.

Though Sri A.Sudershan Reddy, learned senior counsel, reiterated the plea put forth by the first defendant before the trial Court to the effect that his mother was sick during the relevant period, no evidence whatsoever was produced in proof of this claim, be it before the trial Court or this Court. The mere *ipse dixit* of the first defendant in this regard therefore does not commend acceptance. Further, as rightly pointed out, the first defendant already forfeited his right to file a written statement by the time he was set *ex parte*. Therefore, he cannot seek to turn back the clock at this stage without a valid excuse for his inaction all through.

It is well settled that even if a defendant is set *ex parte*, he would still be entitled to take part in the proceedings from that stage, including cross-examination of the witnesses who are examined thereafter. (See **SANGRAM SINGH V/s. ELECTION TRIBUNAL, KOTA**¹, **K.VENKATARAMIAH V/s. A.SEETHARAMA REDDY**², **MODULA INDIA V/s. KAMAKSHYA SINGH DEO**³ and **MAHADEV GOVIND GHARGE V/s. SPECIAL LAND ACQUISITION OFFICER**⁴. Sri Ch.Ramesh Babu, learned counsel, also fairly conceded this aspect.

¹ AIR 1955 SC 425

² AIR 1963 SC 1526

³ (1988) 4 SCC 619

⁴ (2011) 6 SCC 321

In that view of the matter, this Court finds no reason to interfere with the order under revision as the first defendant did not substantiate with just cause the delay and inaction on his part in taking steps within reasonable time.

The civil revision petition is accordingly dismissed subject to the observation made hereinbefore as to the right of the first defendant to participate in the suit proceedings from now, to the extent permitted by law.

Interim order dated 22.09.2017 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

15th DECEMBER, 2017.

PGS

SANJAY KUMAR,J

