

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRP Nos.6462 OF 2016 AND 533 OF 2017

COMMON ORDER:

The two revision petitions CRP.No.6462 of 2016, and CRP.No.533 of 2017 are arising out of the docket orders passed in I.A.No.333 of 2016 and I.A.No.332 of 2016 in O.S.No.22 of 2016 by the Principal Junior Civil Judge, Parvathipuram (for short, trial Court).

Heard learned counsel for the revision petitioners Sri Suresh Kumar Pusarla.

On 02.02.2017, Sri S.Sridhar, learned counsel, appeared on behalf of the respondents and sought time to file vakalat on behalf of the respondents. But, vakalat has not been filed nor he made appearance on behalf of the respondents. However, since notices were served on respondents 1, 2 and 4 in CRP.No.6462 of 2016, their arguments are deemed heard.

It is further submitted that the petitioners have filed two interlocutory applications before the trial Court one for reopening the evidence and other for receiving documents, and those two applications were dismissed by trial Court, without considering the grounds on which they were filed. It is further submitted that as there was no representation on behalf of the petitioners on the date of hearing, as the counsel for the petitioners fell sick and his junior counsel could not attend the Court due to his mother's death anniversary, the trial Court closed the evidence of the petitioners.

At the outset, it is appropriate to refer to the provision under Order XVIII Rule 17 read with Section 151 of CPC which reads as under:

“17. Court may recall and examine witness:- The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.”

It is obvious that the defendants were not given sufficient opportunity to adduce evidence on their behalf.

No doubt, the trial Court had granted several adjournments to the petitioners, but they did not come forward to give evidence and to proceed with the suit. On 02.11.2016, the evidence DWs.2 to 8 was closed and matter was posted for the evidence of D.9. The trial Court observed that the inconvenience of the advocate cannot be a ground for adjournment, and therefore, the evidence of D.9 was closed. The parties cannot be penalized by the acts of the advocates, who do not appear due to their inconvenience or for any other reasons. The Rule of *audi alteram partem* should be observed while deciding the cases by the civil Courts. Nobody should be condemned unheard. The petitioners cannot be deprived of their valuable opportunity of examining their witness to prove their case due to the failure of the counsel to appear before the Court.

The parties in the suit cannot go undefended due to the acts of the advocates engaged by them. The parties would be handicapped in the absence of their advocates to represent their cases or to conduct trial on their behalf.

In view of the foregoing reasons, there are no merits in the two docket orders passed by the trial Court.

In the result, both the Civil Revision Petitions are allowed setting aside the orders passed by the trial Court in I.A.No.333 of 2016 and I.A.No.332 of 2016 in O.S.No.22 of 2016. The trial Court

is directed to give an opportunity to the defendants to adduce their evidence, within 15 days from the date of receipt of a copy of this order. The trial Court shall dispose of the suit expeditiously. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending shall stand closed.

GUDISEVA SHYAM PRASAD, J

Date : 17.02.2017
ssp

