

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.2431 of 2017

ORDER:

The Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner against the order and decree, dated 27.01.2017, passed by the Principal Senior Civil Judge, Nellore, in I.A.No.110 of 2016 in I.A.No.314 of 2011 in O.S.No.621 of 2010.

2. Heard the learned counsel for the petitioner. There is no representation on behalf of the respondents. Perused the material available on record.

3. The plaintiffs filed O.S.No.621 of 2010 for partition of the suit schedule property equally among the plaintiffs and defendants. On 30.03.2011, the petitioner/3rd defendant was set *ex parte* on the ground that the written statement was not filed by 30.03.2011. Aggrieved by the same, on 07.04.2011, the petitioner/3rd defendant filed I.A.No.314 of 2011 under Section 151 of the Code of Civil Procedure, 1908 (for short, "C.P.C") to set aside the *ex parte* order, which was passed on 30.03.2011 and permit the petitioner/3rd defendant to prove the contention of the petitioner and to take on record the written statement filed by him on 08.06.2011. The learned Principal Senior Civil Judge, Nellore, allowed the said I.A.No.314 of 2011 on 16.12.2015 subject to the condition that the petitioner/3rd defendant shall pay costs of Rs.100/- to the respondents/plaintiffs on or before 04.01.2016. On 04.01.2016,

the said I.A. was dismissed for default since the petitioner/3rd defendant was called absent and costs were also not paid and there was no representation on behalf of the petitioner/3rd defendant till 5.00 p.m. and since the order, dated 16.12.2015, was not complied by the petitioner/3rd defendant.

4. The petitioner/3rd defendant, having noticed that there was failure on his part in noting down the costs to be paid on or before 04.01.2016 and having not paid the same, filed I.A.No.110 of 2016 under Order 9 Rule 9 read with Section 151 CPC seeking to restore the earlier order passed in I.A.No.314 of 2011 on 04.01.2016 with a further prayer to accept the prayer to remit the costs of Rs.100/- as directed, but the learned Principal Senior Civil Judge, Nellore, dismissed the said I.A.No.110 of 2016 on 27.01.2017. Challenging the same, the present civil revision petition is filed by the petitioner/3rd defendant.

5. In the present civil revision petition, on 02.06.2017, notice before admission was ordered with a direction to the petitioner to take out personal notice on the respondents. A Proof of Service Memo filed on behalf of the petitioner was produced before the Court by the learned counsel for the petitioner, wherein it is stated that the postal track consignment categorically reveals that item delivered on 21.06.2017 and acknowledgement cards were also filed before this Court. However, it is not discernible from the said acknowledgment cards that on which date the notices came to be served, but

from the close scrutiny of the acknowledgement cards, it is evident that the notices were served in the month of June, 2017.

6. In the facts of the present case, it may be noted that I.A.No.314 of 2011 came to be filed by the petitioner/3rd defendant as far back as on 07.04.2011 seeking to set aside the *ex parte* order passed in O.S.No.621 of 2010 on 30.03.2011. It took as many as four years for the Court below to pass orders on the said I.A.No.314 of 2011 and finally, the learned Principal Senior Civil Judge, Nellore, passed orders on 16.12.2015 by allowing the said I.A.No.314 of 2011 by imposing meager costs of Rs.100/- on the petitioner/3rd defendant to be payable to the respondents/plaintiffs on or before 04.01.2016, failing which the said I.A.No.314 of 2011 shall stand dismissed. On 04.01.2016, since there was no representation on behalf of the petitioner/3rd defendant and as costs of Rs.100/- were not paid to the respondents/plaintiffs, the learned Principal Senior Civil Judge, Nellore, dismissed the said I.A.No.314 of 2011 for default. Even assuming that costs were not paid, the Court below took as much as more than an year to dispose of the I.A.No.110 of 2016 filed on 02.02.2016. In that view of the matter, it cannot be said that there was any negligence on the part of the petitioner/3rd defendant. In such kind of cases, the learned Principal Senior Civil Judge, Nellore, ought to have taken a pragmatic view rather than approaching the case in a pedantic way. Further, there being no opposition to the prayer before this Court and considering the main issue in O.S.No.621 of 2010, being partition of the properties between family members, which is

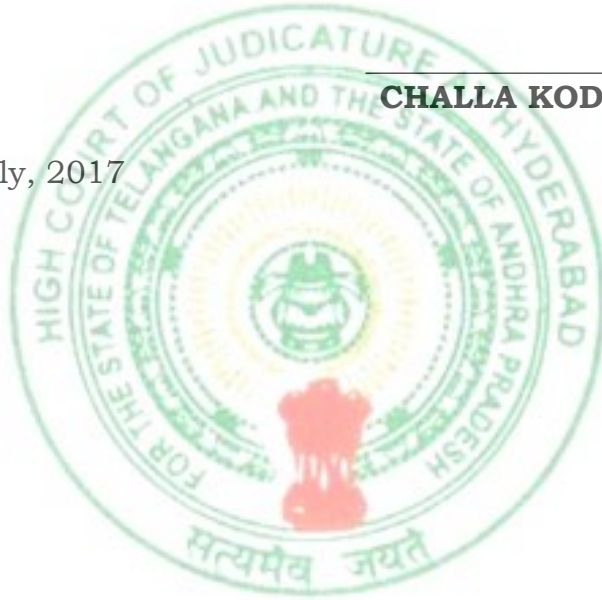
pending before the Court below, this Court is of the view that the civil revision petition may be allowed by setting aside the impugned order, dated 27.01.2017.

7. Accordingly, the Civil Revision Petition is allowed by setting aside the order, dated 27.01.2017, passed by the learned Principal Senior Civil Judge, Nellore, in I.A.No.110 of 2016 in I.A.No.314 of 2011 in O.S.No.621 of 2010. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this civil revision petition shall stand closed.

CHALLA KODANDA RAM, J

Date: 7th July, 2017

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