

HONB'E SRI JUSTICE CHALLA KODANDARAM

CIVIL REVISION PETITION No.3712 OF 2016

ORDER:

The Civil Revision Petition is filed questioning the order dated 20.06.2016, passed by the I Additional Senior Civil Judge, Nellore, in I.A.No.891 of 2015 in O.S.No.260 of 2009, wherein and whereby the application filed by the 2nd respondent herein under Order IX Rule 7 read with Section 151 C.P.C seeking to set aside the exparte order dated 27.03.2015 passed against the defendants 1 and 2, was allowed on payment of costs of Rs.500/-.

It is the case of the petitioner that the Court below had failed to take into consideration of the additional counter-affidavit filed by the petitioner. It is also the case of the petitioner that the petition has been filed by the 2nd respondent himself whereas in the petition signed before the Court below in the impugned I.A., the respondent himself signed in place of the Advocate.

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

It is not in dispute that on 27.03.2015, the 2nd respondent who is a defendant No.2 in the suit, was set exparte. Thereafter, he filed an application in I.A.No.891 of 2015 in O.S.No.260 of 2009, seeking to set aside the exparte order dated 27.03.2015, and the reasons stated for not appearing on 27.03.2015, were on account of the advocates' boycott. Though a counter-affidavit was filed in the Court below, there is no denial of the aspect that on 27.03.2015 there was advocates' boycott on account of the agitation. Though the learned counsel for the petitioner submits that there was a negligence on the part of the 2nd respondent's advocate in conducting the proceedings before the Court below, as a matter of fact, there was no withdrawal of the Vakalat by the counsel appearing on behalf of the 2nd respondent-defendant. The

mistake which the petitioner points out that in the prayer portion of the petition, the 2nd respondent claimed that both on behalf of the defendants 1 and 2, the Court below had taken notice of the same and limited the relief only to 2nd defendant on payment of costs. Further, it may also be noted that the additional affidavit was refused to be taken into consideration on the ground the same is not accompanied by a petition as required under Order VI Rule 17 read with Section 151 of C.P.C.

Apart from that the petitioner himself had stated that the 2nd defendant was participating in the proceedings and defending himself whenever his advocate is not being present. In those circumstances, merely because in the petition filed which is in normal format, it was not stated that it was the petitioner and in usual manner advocate for the petitioner/defendant is reflected the discretion exercised by the Court below for setting aside the *exparte* order dated 27.03.2015 cannot be found fault. The discretionary relief which has been granted cannot defeat the right of the respondent who is the 2nd defendant for a fair trial by having the opportunity to participate in the said proceedings. In the circumstances, the civil revision petition is liable to be dismissed.

Accordingly, the civil revision petition is dismissed. However, it is made clear that as the Court below itself has made it clear that setting aside of the *exparte* order is confined only to 2nd defendant and in no manner would effect any order made against the 1st defendant. No order as to costs.

Miscellaneous Petitions, if any pending in this civil revision petition, shall stand closed.

CHALLA KODANDA RAM,J

Date:27.01.2017,
Gk.

HONB'E SRI JUSTICE CHALLA KODANDARAM

CIVIL REVISION PETITION No.3712 OF 2016

Date:27.01.2017

Gk

