

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.5626 of 2017

ORDER:

The defendant in O.S.No.223 of 2011 on the file of the Court of the Senior Civil Judge, Adoni is the petitioner in the present revision filed under Article 227 of the Constitution of India. The present revision is filed, challenging the order dated 13.10.2017 in I.A.No.80 of 2017 passed by the said Court.

Heard Sri D.V.N.Acharya, learned counsel for the petitioner and Sri K.Mahadeva, learned counsel for the respondent and perused the material available before the record.

The respondent herein instituted the said suit praying for a direction to the defendant/petitioner herein to return 25 tulas of gold and 100 tulas of silver or to pay the value of the same of Rs.6,70,000/-. The plaintiff and the defendant are brothers. In the said suit, the plaintiff/respondent herein filed I.A.No.80 of 2017 under the provisions of Order 16 Rules 1 and 2 of CPC praying the Court below to issue summons to one Sri G.M.C.Eranna to depose about the alleged will dated 06.04.1976. The said application was resisted by the defendant/petitioner herein by way of filing a counter. The learned Judge on 31.07.2017 allowed the application. Questioning the same, the defendant/petitioner herein filed C.R.P.No.3967 of 2017 before this Court. This Court on 06.09.2017 allowed the said revision and the operative portion of the said order reads as under:-

“I have perused the record and prima facie this Court is of the view that though the prayer is for issuing witness summons, the trial Court ought to have at least taken required pains in allowing interlocutory applications.

This Court as matter of course does not expect the trial Courts to render lengthy and meandering orders in every interlocutory applications filed by parties but assist this Court in examining the legality or otherwise of the order passed by it with sufficient reasons. The trial Court ought to have given reasons either for accepting or refusing the prayer, I am satisfied that the order impugned in the revision is unsustainable and accordingly set aside and I.A.No.80 of 2017 is remitted to trial Court for consideration and disposal afresh within one week from today.”

Pursuant to the said order, now the order under revision has been passed by the learned Senior Civil Judge on 13.10.2017 allowing the application. Hence, the present revision.

According to the learned counsel for the defendant/petitioner herein, the impugned order is erroneous and contrary to law and the learned Judge did not take into consideration either the contents of the counter-affidavit or the written arguments filed on behalf of the defendant/petitioner herein. It is the further submission of the learned counsel that though this Court set aside the earlier order on the ground that the same being bereft of any reasons, once again the impugned order came to be passed without considering the objections raised on behalf of the defendant/petitioner herein. Per contra, it is contended by the learned counsel for the plaintiff/respondent herein that the impugned order does not warrant any interference of this Court under Article 226 of the Constitution of India as the same does not suffer from any infirmity. It is the further submission of the learned counsel that in view of the reasons assigned by the learned Judge in the impugned order, the petitioner herein is not entitled for any indulgence by this Court.

The material available before this Court manifestly discloses that as against the earlier order passed by the learned Judge on 31.07.2017, the defendant/petitioner herein filed C.R.P.No.3967 of

2017 before this Court. The order passed by this Court in C.R.P.No.3967 of 2017 is placed on record which clearly shows that on the ground of failure to assign any reasons, the earlier order was set aside by this Court and the matter was remanded.

According to the learned counsel for the petitioner, as stated supra, though the petitioner herein filed a detailed counter and though the written arguments were also filed, the learned Judge did not make any endeavour to consider the same for the purpose of arriving at the conclusions.

A perusal of the order under challenge reveals that though the defendant/petitioner herein raised a number of objections for the maintainability of the application, the same missed the attention of the learned Judge. When specific objections are raised, it is incumbent on the part of the Court to answer the same in one way or the other. The said exercise is conspicuously absent in the impugned order. Therefore, this Court is inclined to remand the matter by setting aside the impugned order.

For the above said reasons, the Civil Revision Petition is allowed, setting aside the order dated 13.10.2017 passed in I.A.No.80 of 2017 and the matter is remanded to the Court below for fresh consideration after giving opportunity to all the stakeholders.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

A.V. SESA SAI, J

22nd December, 2017.
ssp