

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2147 OF 2011

ORDER:

This civil revision petition is filed under Article 227 of Constitution of India challenging the order dated 18.04.2011 passed in I.A.No.123 of 2011 in I.A.No.199 of 2010 in O.S.No.45 of 2010 by the Senior Civil Judge, Yellamanchili, whereby, the petition filed under Order IX Rule 7 and Section 151 of Code of Civil Procedure (for short "C.P.C.") was dismissed.

The petitioner filed petition under Order IX Rule 7 of C.P.C. to set aside the *ex parte* order dated 05.10.2010 on the ground that the petitioner was attending his sister-in-law (wife's sister) Smt.K.Laxmi Sasikala, who was suffering from blood cancer for the last 8 months and he was forced to attend the hospital at Velore and Hyderabad. During the said period, he had to stay away to the place of his residence, thereby he could not contact his counsel, consequently the order was passed setting the petitioner *ex parte* and thus he was prevented by good cause and prayed to set aside the *ex parte* order.

The respondents reported no counter.

The trial Court dismissed the petition on the ground that the petitioner was set *ex parte* on 05.10.2010 and the petition was posted for hearing on 09.11.2010, hence the petitioner has to file application on or before 09.11.2010, but the petition was filed on 07.03.2011 with abnormal delay.

Aggrieved by the said order, the present revision is filed on various grounds mainly contending that the petitioner was prevented by good cause as he was attending his sister-in-law, who was suffering from blood cancer, therefore, the reason assigned by the petitioner is substantial reason and requested this Court to aside the order passed by the trial Court.

Notice was served on the respondents and proof of service was filed.

Admittedly, the suit was filed by the respondent/plaintiff and the petitioner did not appear before the Court on 05.10.2010, thereby he was set *ex parte*. Thereafter, the petitioner filed a petition under Order IX Rule 7 of C.P.C. to set aside the *ex parte* order dated 05.10.2010 on the specific ground that he was attending his wife's sister, who was suffering from blood cancer and produced documents to substantiate his contention that the sister of his wife was suffering from blood cancer and treated at Velore and Hyderabad, but the Court dismissed the petition on the simple ground that the petition was not filed on the next date of passing of *ex parte* order i.e. on 09.11.2010.

According to Order IX Rule 7 of C.P.C. where the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

When the suit is pending and posted for hearing *ex parte*, the petitioner is entitled to file an application on any day before passing *ex parte* decree, but he is not required to file an application on the next date of adjournment itself.

Hence, the reason recorded by the Court below that failure to file application on 09.11.2010 and filing of the same on 07.03.2011 would not disentitle him to claim that he was prevented by a good cause. Here, the cause shown by the petitioner that he was attending his wife's sister, who was suffering from blood cancer, is a good cause for his failure to attend the Court. Moreover, the respondents before the trial Court did not file any counter, but the trial Court erroneously dismissed the petition on the misinterpretation. Hence, to afford an opportunity to the petitioner to contest the suit, I find that it is a fit case to set aside the *ex parte* order dated 05.10.2010 passed by the Court below.

In the result, the civil revision petition is allowed, setting aside the order dated 18.04.2011 passed in I.A.No.123 of 2011 in I.A.No.199 of 2010 in O.S.No.45 of 2010 by the Senior Civil Judge, Yellamanchili No costs.

Consequently, miscellaneous applications pending if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

27.02.2018
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