

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.740 of 2018

ORDER

This revision under Article 227 of the Constitution of India is filed challenging the order dated 16.12.2017 passed in O.P.No.290 of 2016 by the Judge, Additional Family Court, Hyderabad, setting the petitioner *ex parte* for non appearance on the date fixed by the Court.

2. The contention of petitioner is that he is a resident of USA and he could not appear before the Court on the date fixed by the Court as he has already authorized another person to appear on his behalf after obtaining the leave of the Court under Order 33 of Civil Rules of Practice.

3. It is brought to the notice of this Court that the petitioner filed application in I.A.(SR) No.7471 of 2017 under Order 9 Rule 7 read with Section 151 of CPC on 29.12.2017 to set aside the *ex parte* order dated 16.12.2017, but the same was returned on the same day and again it was represented before the Court and is pending for registration. The petitioner, in stead of filing a petition for grant of stay along with the petition under Order 9 Rule 7 of CPC, approached this Court for setting aside the order passed by the Court below, which is the subject matter for adjudication in I.A.(SR).No.7471 of 2017. When a petition is pending before the Court below for setting aside the *ex parte* order, this Court cannot entertain a revision under Article 227 of the Constitution of India.

4. The only ground urged before this Court is that the Court is likely to record the *ex parte* evidence and pass orders, but the remedy available to the petitioner is to file a petition to grant stay of further proceedings along with the petition under Order 9 Rule 7 of C.P.C. The petitioner, in stead of following the procedure adopted, a shortcut method by approaching this Court under Article 227 of the Constitution of India. Therefore, during pendency of the petition at pre-registration stage to set aside the *ex parte* order dated 16.12.2017 before the Court below, this Court cannot pass any order to set aside the same order and if any order is passed by the Court below in the said petition, petitioner can approach this Court.

5. Hence, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

M. SATYANARAYANA MURTHY, J

9th February, 2018

sj