

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.898 OF 2018

ORDER:

The revision petition is filed under Article 227 of the Constitution of India challenging the order dated 02.01.2018 in I.A.No.941 of 2017 in O.S.No.80 of 2011 passed by the I Additional District Judge, Khammam, dismissing the application filed under Order IX Rule 7 C.P.C. to set aside the exparte order dated 07.03.2012.

The petitioners are defendants 2 and 3 in the suit, filed by the 1st respondent/plaintiff for partition and separate possession of the suit schedule properties. The 1st petitioner, who is the 2nd defendant in the suit was suffering from his old age ailments, cardiac problem, underwent by-pass surgery and bed ridden for long time and due to continuous cardiac problems and surgery, he could not engage the advocate and failed to file written statement. As such he was unable to appear before the Court and thereby the Court set them exparte and an exparte order was passed. As such there is delay in filing petition to set aside exparte decree due to cause beyond their control.

The respondents filed counters denying the material allegations opposing the petition on the ground that the petitioners are not entitled to file application after five years to set aside the ex-parte order and the same is filed only to protract the litigation further, including respondents 1 and 4. There are no bonafides to allow the petition hence, prayed to dismiss the application.

Upon hearing both counsel, the Court below dismissed the application on the ground that the petitioners have not prevented

by any cause, which is beyond their reasonable control or sufficient cause and the delay was not explained anywhere and filed petition after five years from the date, the petitioners were set *exparte*.

Petitioners are two in number i.e. defendants 2 and 3, who are father and daughter. The contention of the petitioners is that the 1st petitioner suffered from old age ailments, cardiac problem and underwent by-pass surgery. The 1st petitioner was aged about 57 years at the time of filing the petition and no material is produced before the Court that he underwent by-pass surgery and suffering from old age ailments. Even assuming for a moment that the 1st petitioner was suffering from ailments, nothing prevented the 2nd petitioner-Dara Jayasrilakshmi W/o Hem Kumar, aged about 32 years to file an application to set aside the *exparte* order passed against them. But the contention of learned counsel for the petitioners that the 2nd petitioner was attending the 1st petitioner for the last five years as he was suffering from old age ailments and cardiac problem. But nothing has been placed on record to establish the treatment underwent by the 1st petitioner, who is the 2nd defendant in the suit. In the absence of any proof about the 1st petitioner underwent by-pass surgery and suffering from old age ailments, the plea that the 2nd petitioner attending the 1st petitioner is unbelievable as the 2nd petitioner is a married woman, aged 32 years, residing at Bhadrachalam and whereas the 1st petitioner is resident of Sathupalli. While the 2nd petitioner is leading marital life with her husband at Bhadrachalam, she is not expected to attend her father at Sathupalli for the last five years

before filing the petition. Thus, artificial ground invented by the petitioners, is not sufficient to set aside the exparte order.

Order IX Rule 7 C.P.C. prescribes the procedure where the defendant appears on the day of adjourned hearing and assigns good cause for previous non appearance to set aside the ex parte order. According to Rule 7 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.

To claim bereft under Rule 7 of Order IX C.P.C., the petitioners must assign good cause. The good cause is different from sufficient cause. In the absence of good cause, the petitioners are disentitled to claim berift under Rule 7 of Order IX C.P.C. Curiously, the present petition is filed before the Court below after five years and no explanation was assigned for failure to file such application earlier and that the parties cannot be permitted to approach the Court and file petitions leisurely whenever they find time to approach the Court. If such practice is encouraged, the Courts will be privies to the delays in disposing the matters pending before the Courts.

Having considered the facts and circumstances of the case and delay in filing application i.e. from the date of passing the order, the Court below rightly declined to set aside the exparte order since the petitioners failed to show good cause for their non appearance on the day when the matter was adjourned. Hence, the order impugned is free from any legal infirmity warranting

interference of this Court while exercising power under Article 227 of the Constitution of India and the revision is liable to be dismissed as it devoid of merits.

In the result, the revision petition is dismissed at the stage of admission. There shall be no order as to costs.

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

M. SATYANARAYANA MURTHY,J

14.02.2018
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