

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1128 of 2018

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the Order dt. 07.02.2018 in I.A.SR No.167 of 2018 in I.A.No.298 of 2017 in O.SNo.1777 of 2015 passed by X Junior Civil Judge, City Civil Court, Hyderabad, dismissing the application filed under Order 47 Rule 1 CPC for non compliance of the Order passed earlier having find no ground to review of the Order.

Heard learned counsel for the Petitioner/Defendant No1.

During hearing, learned counsel for the petitioner contended that when there is a mistake on the part of counsel, the court can order review of the Order and placed reliance in an unreported judgment in *High Court of Judicature at Patna v Rakesh Kumar*.

The suit was filed for recovery of amount against this petitioner/defendant, who filed an application under Order 18 Rule 17 CPC to recall the witness PW.1 for further cross examination and the said application was allowed on 10.08.2017 on payment of costs of Rs.500/- to the respondent therein within stipulated time, but the petitioner failed to comply the direction issued by the Court and consequently an Order came to be passed dismissing the application for non-compliance of pre-condition for cross examining PW.1 by this petitioner's counsel.

The present Petition is filed to review the said Order on the ground that earlier counsel did not inform about requirement to pay costs of Rs.500/- to cross examine PW.1 in terms of the Order in I.A.No.298 of 2017 as the petitioner was ignorant of law and prayed to review the Order.

Order 47 Rule 1 CPC permits an aggrieved person by a decree or order from which an appeal is allowed which no appeal has been preferred, by a decree or order from which no appeal is allowed, or by a decision on a reference from a Court of Small Causes and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or other made against him, may apply for a review of judgment to the Court which passed the decree or made the Order. Therefore, if any one seeks review of the Order, there must be apparent error on the face of the record or discovery of new and important matter or evidence which he after exercise of due diligence was not produced before the Court. It is not his case that the petitioner discovered new and important matter or evidence subsequent to passing of the Order in I.A.No.298 of 2017. At best, the petitioner can challenge the Order in I.A.No.298 of 2017, whereby the petition was dismissed for non-compliance of the direction given by the Court. Instead of challenging the Order in I.A.No.298 of 2017, he conveniently filed the present petition under Order 47 Rule 1 of CPC to review the Order without satisfying the requirement under Order 47 Rule (1) CPC. Therefore, the trial Court having satisfied that there was no sufficient ground to review the Order rejected the application. The said Order is now assailed basing on the principle laid down in an unreported judgment referred above.

In the facts of the above judgment, a review petition No.154 of 2015 dt. 13.09.2015 filed for review of the order on the ground that they failed to notice some other relevant or inseverable provisions, thereby

confusion or miscarriage of justice is resulted. The Court in para No.62 of the Judgment held that failure of the counsel to inform the fact to the party was escaped the attention of this Court, while delivering the judgment and order, under review and therefore, there is sufficient ground to review the Order.

In the facts of the above Orders, the petitioner himself contended that the counsel did not inform the facts of the case and thereby the Court escaped from noticing the same and committed an error in disposing the matter pending before it. Here, it is not the case and it is totally in different situation and the ground urged in the review petition would not fall within Clause No.1 or 2 of Order 47(1) CPC. Therefore, rejection of I.A.SR.No.167 of 2018 in I.A.No.298 of 2017 by the trial Court exercising power under Order 47 (4) CPC is free from any illegality warranting interference of this Court and consequently, this Civil Revision petition is liable to be dismissed.

Accordingly, this Civil Revision Petition is dismissed confirming the Order Dt.07.02.2018 in I.A.SR.No.167 of 2018 in I.A.No.298 of 2017 in O.S.No.1777 of 2015 passed by X Junior Civil Judge, City Civil Court, Hyderabad.

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

JUSTICE M. SATYANARAYANA MURTHY

22.02.2018
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C.R.P.No.1128 OF 2018

Dt.22.02.2018

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