

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION No.3901 of 2015

ORDER:

This civil revision petition is filed questioning the order, dated 21.07.2015, passed in E.A.No.74 of 2010 in E.P.No.95 of 2007, by the I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar.

The suit for specific performance was decreed. E.P.No.95 of 2007 was filed for execution of the sale deed. The said execution petition was dismissed as the batta was not paid. Then E.A.No.74 of 2010 was filed to restore the E.P to file by setting aside the dismissal order, dated 21.06.2010. The said application was dismissed. Questioning the same, the present revision petition is filed.

Notices were ordered to the respondents and despite the notice, they did not appear. Learned counsel points out that the notices were sent to the very same addresses which are mentioned in the plaint. The learned counsel also points out that the defendants were served in the suit and one Sri M.S.Kamaluddin, Advocate appeared for the defendants and contested the suit. Therefore, the contention of the learned counsel is that the covers sent by registered post with acknowledgment due to the last known and correct addresses have been returned deliberately. This court finds sufficient force in the said contention and holds that there is deemed service.

On a perusal of the impugned order, this court is of the opinion that the lower court has taken a hyper technical view. The affidavit was given by the counsel in the lower court. The learned counsel has clearly stated in his affidavit that he noted the date of posting of E.P as

25.06.2010 instead of 21.06.2010. When he came to the court on 25.06.2010, he realizes that the E.P was dismissed on 21.06.2010. As can be seen from the verification, the application to restore the E.P was filed on 30.06.2010 itself. Therefore, there is no inordinate delay. The finding of the lower court that the Advocate should produce the court diary is in the circumstances of the case is not called for. The responsible counsel has given an affidavit stating that the mistake was committed by him and he is not expected to file court diary and other proof.

In the circumstances, the order dated 21.07.2015 is set aside. The lower court is directed to restore the E.P to file and issue fresh notices to the J.Drs and proceed with the matter.

With these observations, the civil revision petition is allowed. No order as to costs. The lower court is directed to proceed and decide the matter, in accordance with law, without in any way being influenced by what is mentioned in this order.

Pending miscellaneous applications, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

Date: 29.11.2018
Dsr