

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1242 OF 2015

ORDER:

This revision petition is preferred under Article 227 of Constitution of India challenging the order dated 20.11.2014 in I.A.No.1046 of 2011 in O.S.No.196 of 2011 passed by the I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, whereby the petition filed by the defendant in the main suit under Order XXXVII Rule 3 (5) read with Section 151 of Code of Civil Procedure (for short, hereinafter, referred to as "C.P.C.") was allowed.

The revision petitioners herein are the plaintiffs in the main suit. The present revision is filed on the ground that as the respondent/defendant did not appear before the Court within 10 days from the date of receipt of summons as contemplated under Order XXXVII Rule 3 (1) of C.P.C., the defendant is not entitled to seek leave of the Court to defend the suit under Order XXXVII Rule 3 (5) of C.P.C. and the trial Court committed an error in ordering the petition granting leave to the defendant to defend the suit.

During hearing Sri K.V.Subrahmanya Narusu, learned counsel for the petitioners would contend that when the defendant did not appear before the Court within 10 days as prescribed under Order XXXVII Rule 3 (1) of C.P.C., the Court shall pass a decree even without serving any summons for judgment, but instead of passing decree, the trial Court allowed the petition filed by the respondent/defendant under Order XXXVII Rule 3 (5) of C.P.C. granting leave to defend the suit erroneously and thus,

committed serious error in passing such order and prayed to set aside the same.

Learned counsel for the respondent/defendant contended that in the suit summons, the date of appearance was mentioned as 21.03.2011, hence the respondent/defendant is entitled to appear on or before the date specified in the summons, thereby the defendant did commit no illegality as she appeared before the Court within 10 days and filed petition under Order XXXVII Rule 3 (5) of C.P.C. and prayed to dismiss the revision petition.

Order XXXVII of C.P.C. is a special procedure, which enables the parties to obtain decree if it is for recovery of money or any liquidated amount subject to strict adherence of procedure contemplated under Order XXXVII Rules (1) and (2) of C.P.C. As per the special procedure, the plaint shall contain certain recitals with regard to defence likely to be put forth by the defendant. However, that is not germane to decide the present issue.

As per Order XXXVII Rule 2 (2) of C.P.C. when summons in Form No.4 in Appendix – B were served on the defendant, the defendant shall put up appearance before the Court within 10 days from the date of receipt of summons in Form No.4 in Appendix –B and on the date of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or send such intimation to the party-in-person if the proceedings are being prosecuted by party by registered post with acknowledgement due as contemplated under Order XXXVII Rule 3 (3) of C.P.C.

On compliance of sub-rule (3) of Rule 3 of Order XXXVII of C.P.C. by the defendant, the plaintiff is required to serve the

summons for judgment, as specified in Order XXXVII Rule 3 (4) of C.P.C., in Form No.4A in Appendix B of C.P.C. returnable not less than 10 days from the date of appearance and on service of summons for judgment in Form No.4A in Appendix – B, the defendant within 10 days thereafter may apply for grant of leave to defend the suit under Order XXXVII Rule 3 (5) of C.P.C. putting forth his/her defence and after hearing both parties on such application after affording reasonable opportunity to file counter, the Court shall pass an order under sub-rule (6) of Rule (3) of Order XXXVII of C.P.C.

In the present case, summons in Form No.4 in Appendix B of C.P.C. were served, where the date of appearance was also fixed while permitting the defendant to appear within 10 days from the date of receipt of summons. The defendant received summons, and on the last date fixed for appearance mentioned in the summons, the defendant appeared through counsel and filed Vakalat, but did not comply with the requirement specified Under Order XXXVII Rule 3 (3) of C.P.C., thereby the question of plaintiff's compliance under Order XXXVII Rule 3 (4) of C.P.C. does not arise.

The defendant straight away filed an application under Order XXXVII Rule 3 (5) of C.P.C. seeking leave to defend the suit claim without complying requirement specified under Order XXXVII Rule 3 (3) of C.P.C. Therefore, the trial Court upon hearing arguments of both the counsel allowed the application granting leave to defend the suit without insisting for strict adherence of procedure contemplated under Order XXXVII Rule 3 (3) of C.P.C. Thus, the order passed by the Court below is erroneous on the face of the record and at this stage it is difficult to set right the procedure

followed by both the parties. Therefore, the order passed by the trial Court is hereby set aside while remanding the matter to the trial Court to examine the strict adherence of procedure contemplated under Order XXXVII Rule 3 (1) (3) and (4) of C.P.C. and pass appropriate orders in the petition filed under Order XXXVII Rule 3 (5) of C.P.C. in accordance with sub-rule (6) of Rule (3) of Order XXXVII C.P.C. within a month from the date of receipt of a copy of this order.

In the result, the civil revision petition is allowed remanding the matter to the trial Court to examine about the strict adherence of procedure contemplated under Order XXXVII Rule 3 (1) (3) and (4) of C.P.C. and pass appropriate orders in the petition filed under Order XXXVII Rule 3 (5) of C.P.C. in accordance with sub-rule (6) of Rule (3) of Order XXXVII C.P.C. within a month from the date of receipt of a copy of this order. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

05.02.2018

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