

THE HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.No.104 of 2017

ORDER:

Heard Mr.Venkateshwar Varanasi for revision petitioners.
No representation for respondent inspite of service of notice.

The respondent filed suit against Akula Mondaiah and Sangepu Raju for recovery of Rs.77,750/- with interest.

Akula Mondaiah-Defendant No.1 is the principal borrower and Sangepu Raju is the surety. The respondent filed I.A.No.41 of 2016 for the following relief:

“...to set aside the order dated 09.12.2010, for adding of the respondents 3 & 4, who are the legal representatives of deceased Respondent No.1, as defendants 3 and 4 in the main suit”

The learned trial Judge taking note of the presence of 2nd defendant who is also the son of deceased 1st defendant allowed the prayer.

Mr.Venkateshwar Varanasi contends that the suit is abated as the trial Court without condoning the delay in filing the application to bring on record the legal representatives, set aside the abatement, therefore, according to him, it cannot be understood that the presence of 2nd defendant represents the estate of deceased defendant No.1. Hence, the order impugned in the Civil Revision Petition, therefore, is liable to be set aside.

I have heard the counsel and perused the record.

In the case on hand, the 2nd defendant who is a surety to the suit promissory note is already arrayed as one of the defendants. In such cases, by filing a memo, the person who is already on record is recognized as legal representative of deceased party. In the case on hand, the procedure followed may not be completely tenable but it cannot be termed as illegal warranting interference of this Court under Article 227 of Constitution of India. The 2nd defendant is the son of deceased defendant No.1, the assumption that the case is abated, is incorrect.

For the above reasons, this Court is of the view that no ground is made out interfering with the order under revision.

Hence, the Civil Revision Petition fails and accordingly dismissed. No order as to costs.

The learned trial Judge considers disposing of the suit as expeditiously as possible, preferably within eight weeks from the date of receipt of copy of this order.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Dt: 04.09.2018

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