

HON'BLE SRI JUSTICE S.V. BHATT

C.R.P.No.2350 OF 2018

ORDER:

Heard Mr.Raj Kumar Grandhi for revision petitioner and Mr.K.Venu Madhav for respondents/plaintiffs.

The court below, it seems the proverb viz 'a stitch in time saves nine and the provision of law', which the Court is required to take note or follow while considering the prayers made through interlocutory applications are not noted or followed.

Mr.Raj Kumar Grandhi made no bones about assailing the order impugned in the present revision.

This Court on the assertions made on behalf of revision petitioner, whether are tenable/correct called for the record and the operative portion of the order dated 15.06.2018 reads thus :-

Perused the record sent by the Court of Principal Junior Civil Judge, Jagtial.

Prima facie, it appears without notice to the revision petitioner, I.A.No.351 of 2017 was allowed. Further, when steps were taken for framing issues as are required in view of the subsequent developments, the same was negatived through order dated 02.01.2018. The learned trial Judge records a finding through her order dated 02.01.2018 that there is no necessity to frame additional issue viz., whether the suit is maintainable against defendant No.3 as date of filing implead petition or filing written statement.

Mr.G.Rajkumar contends that the trial is not conducted as stipulated by the Civil Procedure Code but the trial is conducted without referring to earlier orders and procedural deviations. Though the contention is noted, for the present, no finding on this aspect is recorded.

To meet the ends of justice and to prevent further prejudice to the parties in conduct of trial, the Court directs stay of all further proceedings in O.S.No.48 of 2004, on the file

of Principal Junior Civil Judge, Jagtial, for a period of four weeks from today.

List the revision 'for admission' on 29.06.2018.

The trial Court has sent the record in I.A.No.351 of 2017.

The circumstances relevant for disposing of the revision are stated as follows:-

O.S.No.48 of 2004 was dismissed for default on 16.03.2009. The application filed for setting aside the default order was dismissed on 11.12.2009. The respondents filed C.M.A.No.1 of 2015 on the file of Senior Civil Judge, Jagtial. On 18.06.2016, the C.M.A. was allowed. Thus, the default order dated 16.03.2009 was set aside and O.S.No.48 of 2004 was restored to file.

The revision petitioner admittedly has purchased the plaint schedule property through registered sale deed dated 11.12.2008. While matter stood thus, on 21.06.2017, the respondents filed I.A.No.351 of 2017 under Order 1 Rule 10 of CPC read with Rule 28 of Civil Rules of Practice. On the same day, notice to other side was ordered, the I.A. was directed to be listed on 30.06.2017, was adjourned to 13.07.2017 and finally on 06.07.2017, the order under revision was passed. The application to implead the revision petitioner was allowed on the concession given by the 1st defendant. The operative portion of the order dated 06.07.2017 reads thus:-

“The petitioners/plaintiffs filed this present suit seeking the relief of perpetual injunction against respondents/defendants 1 and 2 from opening windows towards southern side of the construction being undertaken by the defendant No.1 in respect of H.No.2-2-234 stating that their easementary rights are being

effected. The contention of the petitioners is that since the defendant No.1 sold the suit property to one Gunda Shobha, she is to be impleaded as defendant No.3. The respondents/ defendants did not raise any objection with regard to the alleged alienation and also with regard to impleading the property defendant No.3/ Gunda Shobha.

In circumstances of the case, it is just and proper to implead Gunda Shobha as defendant No.3, accordingly petition is allowed.”

The revision petitioner contends that the revision petitioner even if has purchased the property during pendency of the suit, the respondents herein if intend to implead the revision petitioner as one of the defendants in suit, the revision petitioner is entitled for notice under Rule 58 of Civil Rules of Practice, which reads thus :-

“ Service of notice :-

(1) Unless the court otherwise orders, notice of an interlocutory application shall be given to the other parties to the suit or matter or their Advocate not less than three days before the day appointed for the hearing of the application.

(2) Such notice shall be served on the Advocate whenever the party appears by such Advocate.

(3) Notice of the application may be served on a party not appearing by Advocate by registered post acknowledgment due, or by speed post or by an approved courier service or by fax message or by electronic mail service or by such means to the address given in the pleading and in the event of its non-service on the party by means of summons to be delivered to the party or in the event of the party being absent or refusing to receive the same, affixture at his address.]

(4) Unless the court, otherwise orders, notice of Interlocutory application need not be given to a party, who having been served with the notice in the main suit, appeal or other proceedings, has not entered appearance or to a party to whom notice in the appeal has been dispensed with under the provisions of Rule 14 of Order XLI of the Code.”

The petitioner lays emphasis on the words 'unless the Court, otherwise orders'. The procedure followed by a Court is to order notice or alternatively orders otherwise why notice is dispensed with for the present is notice of interlocutory applications filed is served on the other side.

In the case on hand, the prayer is under Order 1 Rule 10 CPC, the notice goes to the party, who is impleaded in the suit. The application, if is ordered in the absence of notice, the rights available to a third party defendant are adversely affected. This Court prefers to reiterate that the trial Court, if has exercised its discretion and jurisdiction by keeping in view the requirements of Rule 58 of Civil Rules of Practice, the order impugned in the Civil Revision Petition would not have been passed. Be that as it may, the emphasis is on non-service of notice and also that the right of proposed defendant to contest the application, thereby, is lost. The record forwarded by the trial Court supports the objection raised by revision petitioner. This Court in exercise of its supervisory jurisdiction is satisfied that the trial Court ought to have acted in accordance with the procedure while disposing of interlocutory application. The failure to follow the procedure has certainly resulted in hardship to the revision petitioner.

Mr.K.Venu Madhav submits that the revision petitioner herein since has filed vakalat/written statement, and is contesting the suit, this Court may not examine the procedural objection now raised by the revision petitioner for academic purpose. Even if prejudice has occasioned to revision petitioner, the prejudice is substantially remedied with the written statement filed by the revision petitioner.

The contention is placed on record. This Court *prima facie* is of the view that the order in I.A.No.351 of 2017 was passed on 06.07.2017. Thereafter, I.A.No.142 of 2018 was filed for amendment of plaint and the same was allowed on 09.03.2018. Thereafter, the revision petitioner has filed vakalat.

Therefore, this Court is of the view that at every stage, the trial Court, if proceeds in the matter ex-parte, filing of vakalat cannot and could not be treated as curing the infirmity in disposing of I.A.No.351 of 2017.

Therefore, the order dated 06.07.2017 in I.A.No.351 of 2017 is set aside. I.A.No.351 of 2017 is remitted to the trial court for disposal in accordance with law. The trial Court is directed to dispose of the suit as expeditiously as possible, preferably within two months from the date of receipt of a copy of this order. Further, the trial Court is directed to inform the Registry, after the suit is disposed of.

Accordingly, the Civil Revision Petition is ordered. No order as to costs.

Pending miscellaneous petitions, if any, stands closed.

S.V.BHATT, J

Date:01-10-2018

Note:

- 1) Registry is directed to return the record forthwith.
- 2) Issue C.C. in three days
(B/o)
Prv