

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.1067 of 2016

JUDGMENT:

This appeal is filed under Order XLIII Rule 1 and Section 104 C.P.C. assailing the order dated 01.11.2016 passed in I.A.No.324 of 2013 in O.S.No.1269 of 2011 on the file of the VII Senior Civil Judge, City Civil Court, Hyderabad.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that the respondent filed O.S.No.1269 of 2011 on the file of the VII Senior Civil Judge, City Civil Court, Hyderabad, against the petitioner for recovery of an amount of Rs.7,45,280/- with future interest at the rate of 24% per annum basing on the letter of undertaking dated 19.11.2009. For one reason or other, the petitioner did not appear before the trial Court. Having no other alternative, the trial Court passed an *ex parte* decree on 18.01.2012.

4. The petitioner filed I.A.No.840 of 2012, under Section 5 of the Limitation Act, to condone the delay in filing the application to set aside the *ex parte* decree dated 18.01.2012 and the same was allowed. The petitioner filed I.A.No.324 of 2013, under Order IX Rule 13 C.P.C. to set aside the *ex parte* decree dated 18.01.2012 and the same was dismissed. Hence, this revision petition.

5. The respondent filed a counter in I.A.No.324 of 2013 taking a specific plea that the petitioner obtained favourable orders in I.A.No.840 of 2012 by playing fraud on Court. A perusal of the

record reveals that the respondent mentioned his address in O.S.No.1269 of 2011 as follows:

“S.V.Raghava Reddy, S/o.Sambasiva Reddy,
Aged about 50 years, Occ: Electrical & Civil Contractor,
R/o. MC-113, Malakpet Colony, Hyderabad.”

6. It is not in dispute that the petitioner sent notice to the respondent in I.A.No.840 of 2012 as if he is residing in Prakasam District.

7. It is the specific case of the respondent that he was not residing in the address as mentioned in I.A.No.840 of 2012. The trial Court permitted the petitioner to serve notice on the respondent by way of substitute service i.e., by giving a paper publication. The trial Court allowed I.A.No.840 of 2012 basing on the substitute service. Even though the respondent has taken a specific plea in the counter that the petitioner obtained orders in I.A.No.840 of 2012 by playing a fraud, the trial Court has not addressed that issue. However, the trial Court dismissed the petition on other grounds. Whether the petitioner played fraud or not is a relevant point to pass appropriate orders in I.A.No.324 of 2013.

8. Learned counsel for both parties, with one voice, submitted that the trial Court has not addressed the above said fact.

9. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that it is a fit case to set aside the order dated 01.11.2016 passed in I.A.No.324 of 2013 in O.S.No.1269 of 2011 on the file of the VII Senior Civil Judge, City Civil Court, Hyderabad.

10. In the result, the Civil Miscellaneous Appeal is allowed setting aside the order dated 01.11.2016 passed in I.A.No.324 of 2013 in O.S.No.1269 of 2011 on the file of the VII Senior Civil Judge, City Civil Court, Hyderabad, and remanding the matter to the trial Court. The trial Court is hereby directed to give a specific finding whether the petitioner had obtained orders in I.A.No.840 of 2012 by playing a fraud or not. The trial Court is further directed to consider the application on other aspects also and pass orders basing on the material available on record. There shall be no order as to costs.

11. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.



T.SUNIL CHOWDARY, J

Date: 02.07.2018
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