

THE HON'BLE SRI JUSTICE SANJAY KUMAR  
CIVIL REVISION PETITION NO.3548 OF 2018

O R D E R

The petitioner is the appellant in A.S.No.2 of 2010 on the file of the learned VIII Additional District Judge, Ranga Reddy District at L.B.Nagar. The said appeal was filed by him against the judgment and decree in O.S.No.1045 of 2001 on the file of the learned III Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar. The appeal was however dismissed for default on 19.12.2012. He thereupon filed I.A.No.13 of 2014 under Order 41 Rule 19 CPC to restore the appeal. However, the said I.A. was also dismissed for default on 31.08.2016. He then filed I.A.No.746 of 2016 in I.A.No.13 of 2014 in A.S.No.2 of 2010 seeking restoration of I.A.No.13 of 2014 in A.S.No.2 of 2010. By order dated 04.02.2018, the appellate Court dismissed the said I.A. Aggrieved thereby, he is in revision under Section 115 CPC.

Notice before admission having been ordered in this revision on 29.06.2018, this Court permitted personal service of notice upon the respondents by registered post with acknowledgement due. Respondent 1, as per the cause title, is deceased. The name of Sri Munthagari Hanumantha Rao, learned counsel, was shown in the cause list as appearing for respondents 2 and 3. However, the learned counsel was not present when this matter was taken up for hearing on 09.11.2018. It was accordingly directed to be posted on 13.11.2018 at 1.40 PM. On that day also, there was no representation for Sri Munthagari Hanumantha Rao, learned counsel, and the Registry was directed to verify and put up the vakalat, if any, filed by him as his name was shown in the cause list. The matter was accordingly directed to be listed on 15.11.2018 at 1.40 PM. On

the said day, there was again no representation for Sri Munthagari Hanumantha Rao, learned counsel, but the vakalat put up in the file indicated that he had entered appearance for respondents 2 and 3. The matter was accordingly directed to be posted for orders on 16.11.2018. However, on the said day, once again, there was no representation for Sri Munthagari Hanumantha Rao, learned counsel, or the respondents for whom he was appearing. Orders were thereupon reserved in the revision, after hearing the arguments of Sri R.Satyanarayana Reddy, learned counsel for the petitioner.

Perusal of the affidavit filed in support of the subject I.A. reflects that the petitioner claimed that there was a traffic jam on 31.08.2016 in the city due to heavy rains and his Advocate was held up for hours together and could not reach the Court to represent the matter during the call work. By the time his counsel reached the Court at about 12.00 PM, the trial Court had already dismissed I.A.No.13 of 2014 in A.S.No.2 of 2010 for default. He further stated that as his area in Malkajgiri was also affected badly due to the rain and as no public transport was available, he could not reach the Court to represent the matter when it was called. He therefore sought restoration of the I.A.

The respondents, being the plaintiffs in the suit, filed a counter contesting the claim of the appellant that there was heavy rain in the city on 31.08.2016.

Thereupon, *vide* the order dated 04.02.2018, the appellate Court noted that a conditional order had been passed in I.A.No.13 of 2014 as long back as on 24.09.2014, permitting the appellant to address arguments in the main appeal on 28.10.2014. However, he failed to do so on the said date and chose to file an application under Order 41 Rule 27

CPC in I.A.No.303 of 2015 but the same came to be dismissed on 31.08.2016. There was no representation on behalf of the appellant either on 21.06.2016 or on 31.08.2016. Further, as he failed to produce oral or documentary evidence in evidence of the heavy rains on 31.08.2016, paralyzing the transportation system whereby neither the appellant nor his counsel could reach the Court in time, the trial Court held that there were no bonafides on his part and accordingly dismissed the I.A.

It is the case of Sri R.Satyanarayana Reddy, learned counsel, that the plaintiffs in the suit are none other than the sisters of the revision petitioner and they filed the subject suit for partition on the strength of a Will allegedly executed by their mother. The suit schedule property is the house property bearing No.8-85 situated at Malkajgiri, Ranga Reddy District, admeasuring 281 square yards. According to the learned counsel, the suit schedule property is the self-acquired property of the revision petitioner himself and the said aspect was also taken note of by the trial Court in para 12 of the judgment, which is under appeal in A.S.No.2 of 2010. Learned counsel would therefore contend that the revision petitioner should be afforded an opportunity to have his case adjudicated on merits rather than have it dismissed on technicalities.

Though no material is placed before this Court in proof of the heavy rains which are said to have disrupted transportation and traffic in the city on 31.08.2016, the fact remains that valuable property rights of the revision petitioner are at stake. Therefore, his right of appeal ought not to be impaired on technical grounds. No doubt, there appear to be serious lapses on his part in properly prosecuting his appeal and after its dismissal, the restoration petition. Given these circumstances, this Court is

of the opinion that he should be afforded a final opportunity to address the case on merits before the appellate Court on terms.

The civil revision petition is accordingly allowed restoring to the file I.A.No.13 of 2014 in A.S.No.2 of 2010, on payment of costs of Rs.1,000/- each to respondents 2 and 3. Upon proof of payment of such costs, the appellate Court of the learned VIII Additional District Judge, Ranga Reddy District at L.B.Nagar, shall fix a date for hearing of I.A.No.13 of 2014 on its own merits and in the event, the same is allowed, fix a further date for hearing of the appeal on merits. The petitioner shall fail not in respect of either of the aforesaid dates and shall make use of the same to put forth his case, be it for restoration of the appeal or thereafter, if the situation arises, for adjudication of the appeal, on merits.

Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

23<sup>rd</sup> NOVEMBER, 2018

Sv

SANJAY KUMAR, J