

THE HON'BLE SRI JUSTICE P. KESHA RAO
CRIMINAL REVISION CASE NO.1662 OF 2018

ORDER:

Heard the learned counsel for the petitioner. Though notice is served on respondent No.2 on 7.7.2018 as evident from the track consignment report, she has not chosen to appear either in person or by engaging any counsel. Therefore, the said track consignment report is made part of the record and this Court, takes into consideration the said report and treats that it is a deemed service.

The present Criminal Revision Case is filed questioning the orders passed in CrI.M.P.No.2951 of 2016 in M.C.No.5 of 2016 dated 31.10.2017 on the file of the Court of the Judicial Magistrate of First Class, Atmakur, SPSR Nellore district.

The facts of the case are that respondent Nos. 2 and 3 herein filed M.C.No.5 of 2016 claiming a sum of Rs.10,000/- each towards maintenance from the petitioner herein, on the file of the Court of Judicial Magistrate of First Class, Atmakur. The petitioner herein was served with a notice of appearance in the above said M.C. A perusal of the said copy of the notice would indicate that no date of hearing has been mentioned. Since there was no representation on behalf of the petitioner, he was set ex-parte and orders were passed on 12.7.2016 directing the petitioner to pay monthly maintenance @ Rs.3,000/- p.m. each to respondent Nos.2 and 3 from the date of the petition. The petitioner, after coming to know about the passing

of the orders in the above said M.C., filed CrI.M.P.No.2951 of 2016 to set aside the ex-parte order dated 12.7.2016 since he was not given an opportunity to contest the M.C. The said CrI.M.P. was posted for the counter of respondents 2 and 3. The said CrI.M.P. underwent many adjournments from 17.12.2016 to 31.10.2017. On all these occasions, the endorsement of the Court below is, "For counter". On 31.10.2017, the Court below, observed that "petitioner is present, respondent absent, no counter, hence the petition is dismissed." Aggrieved by the said orders, the present Criminal Revision Case is filed.

Learned counsel for the petitioner would contend that no notice has been issued giving the date of hearing enabling him to appear in the M.C. A perusal of the said notice issued by the Court below also would reveal that the date of appearance in M.C.No.5 of 2016 is not mentioned therein. Therefore, the ex-parte order passed against the petitioner on 12.7.2016 is liable to be set aside.

Having heard the learned counsel for the petitioner and on perusal of the material on record, it is disclosed that though a notice of appearance has been issued to the petitioner in M.C. 5 of 2016, the date of appearance is not mentioned therein, whereby the petitioner was not able to appear before the Court below. Hence, there is a reasonable ground for the petitioner to plead that the ex-parte order passed against him is not sustainable in the eye of law. Therefore, this Court feels that that it is a fit case where the ex-parte order can be set aside. That apart even in CrI.M.P.No.2951 of

2016, when the Court below observed that the petition is coming up for counter, for non-filing of the same, the petition cannot be dismissed. This is un-known to law.

In the light of the above facts and circumstances, the Criminal Revision Case is allowed by setting aside the order passed in CrI.M.P.No.2951 of 2016 in M.C.No.5 of 2016 dated 31.10.2017 on the file of the Court of Judicial Magistrate of First Class, Atmakur and consequently, the order dated 12.7.2016 in M.C.No.5 of 2016 is set aside.

Learned counsel for the petitioner brought to the notice of this Court that since there was no representation, the Court below has issued NBW against the petitioner herein on 18.6.2018.

In the light of the discussion made above, the NBW dated 18.6.2018 issued against the petitioner herein is hereby recalled in the interest of justice.

Pending miscellaneous petitions, if any, shall stand closed.
No order as to costs.

P. KESHAHA RAO,J

Date: 17.7.2018

KPM