

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION Nos.3908 & 3942 OF 2018

DATED :28.09.2018

Between :

Muniganti Suresh S/o.Sadanandam,
Aged 46 yrs, Occu : Senior Assistant,
O/o.DWTO, Collector Compound,
Kareemnagar District.

..

And

Petitioner/JDR No.1

M/s. Siri Chit Fund Pvt. Ltd.,
Rep., by its Foreman E.Rajaiah,
S/o.Mallaiah, Aged 61 yrs,
Office at D.S.Temple Street, Warangal & others.

Respondents



This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION Nos.3908 & 3942 OF 2018

COMMON ORDER :

These two revision petitions are filed against the orders in E.A.No.30 of 2015 and E.A.No.31 of 2015 in E.P.No.149 of 2014 on the file of Principal Junior Civil Judge, Warangal, respectively.

2. Petitioner in these civil revision petitions is the Judgment Debtor No.1 and respondent No.1 in E.P.No.149 of 2014. The said E.P., was listed on 15.12.2014 for payment of process against respondents therein/JDrs.1 to 4. As the process was not paid on the said date, the E.P., was dismissed for default for non-payment of process. The respondent No.1 who is the decree holder, filed E.A.No.30 of 2015 praying to condone the delay of 38 days in filing the petition under Order 21 Rule 106 of Code of Civil Procedure (C.P.C). He also filed E.A.No.31 of 2015 to set aside the dismissal order dated 15.12.2014 and permit him to pay the process against respondents 1 to 4 therein.

3. The Court below by order dated 24.01.2017 condoned the delay in filing the petition and allowed the petition to set aside the dismissal order.

4. According to learned counsel for the petitioner, petitioner was not put on notice and was not afforded opportunity before condoning the delay and restoring the E.P. In support of his contention, learned counsel also placed reliance on the decision of this Court in ***"C.Eshwar Reddy Vs A.P.State Cooperative***

Marketing Federation, Parasram Bhavan Basheerbagh, Hyderabad¹”.

5. As can be seen from the affidavit filed by the petitioner in I.A.No.01 of 2018 it is his categorical assertion that he was not put on notice before passing orders. This fact is not denied. Even though notice is served on respondent No.1, no appearance is entered.

6. Considering the provision in Order 21 Rule 105 & 106 of C.P.C., this Court in the above judgment held as under :

“Therefore, even when the application has been dismissed for default of the decree-holder, when restoration is sought for, service of notice under sub-rule (2) of rule 106 of Order 21, is mandatory and the order without notice is violative of the principles of natural justice-ex debito justitiae”.

7. As admittedly, petitioner was not put on notice the orders against which these two revisions are filed, are liable to be set aside and accordingly both the Civil Revision Petitions are allowed and the matter is remitted to the Court below for consideration of applications filed by the respondent/D.Hr after affording due opportunity to the petitioner/J.Dr.No.1.Pending miscellaneous petitions shall stand closed.

28th September, 2018
Rds

P.NAVEEN RAO,J

¹ 1987 (1) ALT 249