

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.5110 of 2018

ORDER:

This Civil Revision Petition is filed questioning the Order dt.20.06.2018 in I.A.No.110 of 2018 in I.A.No.457 of 2017 in O.S.No.36 of 2015 passed by the Junior Civil Judge, Railway Kodur, dismissing the application filed under Section 151 of CPC to reopen I.A.No.457 of 2017.

The petitioner is the plaintiff before the trial Court, who filed suit for declaration, mandatory injunction and for recovery of possession and thereafter, he adduced evidence and the suit was posted for defendant's evidence. On behalf of defendants, Dw.1 was examined and the examination in chief of Dw.2 was filed on 16.11.2017 and the suit was posted to 23.11.2017 for cross examination of Dw.2. As the Presiding Officer was on leave, again the suit was posted to 30.11.2017 for cross examination of Dw.2. The reason assigned by the petitioner for failure to cross examination the witness extracted herein:

“ the Hon'ble Court was pleased to call my case and passed over. On that day, my counsel travelling his mobile phone thefted by unknown offenders, hence is not come to the Court. Thereafter, the Hon'ble Court was pleased to call my case, my counsel absent and cross examination treated as Nil and the same is recorded, defendant's side evidence closed. The case is posted for arguments.”

The respondent/defendant filed Counter opposing the petition and later the petition in I.A.No.457 of 2017 was posted from time to time and it was adjourned several times due to non-appearance of the counsel or the petitioner as observed in the Docket Order dt. 20.06.2017 and finally, the petition was dismissed on 28.03.2018.

Aggrieved by the said Order, the present Revision Petition is filed.

The petitioner/plaintiff filed I.A.No.457 of 2017 on 08.12.2017 and he was successful in dragging the suit till 28.03.2018 even without appearing before the Court and representing the plaintiff. The trial Court having no other alternative dismissed I.A.No.457 of 2017 and for restoration of the same, I.A.No.110 of 2018 was filed and it was also dismissed by the trial Court by Docket Order dt. 20.06.2018. Passing such an Order without appreciating the contention raised by the petitioner is an illegality committed by the trial Court. In the petition No.110 of 2018, the reason assigned by him was that his counsel held up at Kurnool and that he himself held up at Chittor and therefore, they could not appear before the Court to advance the arguments in I.A.No.457 of 2017. But, this ground was not considered by the trial Court and if the trial Court considers this ground urged in the petition, the Court is expected to pass reasoned Order whether the ground raised in the petition is sufficient cause or not to set aside the Order passed in I.A.No.457 of 2017. Therefore, the Docket Order dt. 20.06.2018 is illegal and the same is hereby set aside while remanding the petition to the trial Court to decide I.A.No.110 of 2018 afresh after considering the ground urged in para No.2 of the affidavit filed in I.A.No.110 of 2018 in accordance with law.

With the above observation, the present Civil Revision Petition is disposed of at the stage of admission.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 20-09-2018
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