

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.2297 of 2016

ORDER:

This civil revision petition is filed by defendant No.2, under Article 227 of the Constitution of India, assailing the order dated 15.3.2016 passed in I.A.No.23 of 2016 in O.S. No.2055 of 2011 on the file of the IV Senior Civil Judge, City Civil Court, Hyderabad.

2. Heard the learned counsel for both the parties.

3. The point that arises for consideration is:

Whether there is any illegality, irregularity or impropriety in the impugned order?

4. A perusal of the record reveals that the first respondent filed O.S.No.2055 of 2016 against the petitioner and respondent Nos.2 to 4 for recovery of the suit amount. At the stage of defendants' side evidence, the petitioner filed the petition to set aside the *ex parte* order dated 06.2.2012 passed against him. The first respondent filed counter *inter alia* contending that the petitioner filed the petition to drag on the proceedings. The trial Court, after affording reasonable opportunity to both the parties, dismissed the petition. Hence, the revision.

5. It is the contention of the petitioner that since the suit summons were not served on him, he could not make appearance in the suit. The trial Court, in the impugned order, observed that defendant Nos.1 and 2 are contesting the suit by filing written statement. This finding is factually incorrect, as the petitioner-second defendant was set *ex parte* in the suit by the trial Court on

06.2.2012. The petitioner is surety of the first defendant. If the petition is dismissed, it may not be possible for the petitioner to substantiate his stand. Even if the petition is allowed, the same may not cause any prejudice to the respondents. While deciding the petitions of this nature, the approach of the Court shall be pragmatic and not pedantic.

6. Taking into consideration the facts and circumstances of the case, this Court is of considered view that it is a fit case to allow the revision.

7. In the result, the civil revision petition is allowed, setting aside the order dated 15.3.2016 passed in I.A.No.23 of 2016. Consequently, I.A.No.23 of 2016 in O.S. No.2055 of 2011 on the file of the IV Senior Civil Judge, City Civil Court, Hyderabad, is allowed. The trial Court is hereby directed to dispose of O.S.No.2055 of 2011 within a period of three months from the date of receipt of a copy of this order. In case, the petitioner does not co-operate for the progress of the suit, the trial Court is at liberty to proceed in accordance with law. Miscellaneous petitions, if any pending in this revision shall stand closed.

T.SUNIL CHOWDARY, J

Date: 05.12.2018
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