

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.5574 of 2018

ORDER:

The unsuccessful defendant filed this Civil Revision Petition, under Article 227 of the Constitution of India, assailing the docket order, dated 26.07.2018, of the learned Principal Senior Civil Judge, Nellore, passed in I.A.No.447 of 2018 in O.S.No.267 of 2013.

2. I have heard the submissions of the learned counsel for the petitioner/defendant and perused the material record. Notice sent to the respondent/plaintiff was returned with an endorsement 'refused'. Learned counsel for the defendant also placed on record an acknowledgment, under which the notice is said to have been personally served upon the respondent/plaintiff. The respondent has not entered appearance.

3. The facts, which are necessary to be stated as a preface to this order, in brief, are as follows:

The respondent/plaintiff filed a suit against the petitioner/defendant for a direction to the defendant to pay to the plaintiff a sum of Rs.50,000/- per month as rent by increasing the existing rent from Rs.40,000/- per month by Rs.10,000/- and for other reliefs. During the course of trial, after PW1 was examined in- chief, the counsel for the defendant sought time for cross-examination on the ground that he was unwell. However, the Court below treated the cross-examination of PW1 as 'Nil' and adjourned the suit. Thereafter, the defendant filed the

subject I.A.No.447 of 2018 stating the necessary facts and requesting to recall PW1 for cross-examination. The said application was disposed of by passing the following cryptic order:

‘P.W.1 and P.W.2 are called absent. No representation for
P.W.1 and P.W.2. Petition is closed.’

4. In this backdrop, as rightly urged by the learned counsel for the defendant, the impugned order, which is a cryptic and unreasoned order, is hopelessly unsustainable and is liable to be set aside. Learned counsel for the defendant also submits that when a petition is filed for recalling PW1 for cross-examination, the Court below noted the absence of PWs 1 & 2 and closed the petition without passing any orders on the interlocutory application and that the said course adopted by the Court below is unknown to law and that the closure of an application filed seeking an order on merits is no order in the eye of law. When an application is filed for recalling PW1, the trial Court ought to have disposed of the said application on its merits. The cryptic order noting the absence of PWs 1 & 2 and closing the petition for their absence without passing an order in the application is a flawed order. Therefore, the said order is liable to be set aside in the interests of justice. When the matter is before the trial Court and when the party is not at fault and when time was sought by his counsel on the ground of his illness, the Court below ought to have adjourned the matter for cross-examination of PW1, or in the alternative, the Court below ought to have allowed the interlocutory application filed for recall of PW1 for cross-examination.

5. Having regard to the facts & submissions, this Court finds that sufficient grounds exist to set aside the impugned order and afford an opportunity to the defendant to cross-examine PW1. Such a course would sub-serve the ends of justice.

6. In the result, the Civil Revision Petition is allowed and the order, dated 26.07.2018, of the learned Principal Senior Civil Judge, Nellore, passed in I.A.No.447 of 2018 in O.S.No.267 of 2013, is set-aside and accordingly the said IA is allowed. The trial Court shall now fix a date for appearance of PW 1, as per its convenience and the convenience of both the parties, for cross-examination of the said witness by the learned counsel for the defendant. The trial Court shall endeavour to complete the recording of cross-examination of PW 1 within 10 days from the date of receipt of a copy of this order.

There shall be no order as to costs.

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

M.SEETHARAMA MURTI, J

09.11.2018

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