

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.5790 OF 2017

ORDER:

This revision petition is filed under Article 227 of the Constitution of India questioning the propriety and legality of the order dated 02.06.2016 in I.A.No.103 of 2016 in O.S.No.42 of 2015 passed by the Principal District Judge, Khammam, allowing the application filed under Order 32 Rule 1 read with 151 C.P.C.

The petitioner is the defendant in the suit and first respondent filed a petition under Order 32 Rule 1 read with Section 151 C.P.C. seeking leave of the Court to prosecute the proceedings being power of attorney holder of the plaintiff in O.S.No.42 of 2015 on the ground that the original plaintiff went to Australia after her marriage.

The petitioner filed counter on 24.07.2016 raising several contentions. The District Judge passed the impugned order recording that learned counsel for the petitioner reported no objection.

The impugned order is challenged on the ground that the petitioner having filed counter, never reported no objection to allow the application. In support of his contention, learned counsel for the petitioner filed verified affidavit before this Court stating that he never reported no objection and filed counter in the petition requesting the Court to pass appropriate order in accordance with law.

The District and Sessions Judge passed impugned order recording no objection reported by the petitioner is illegal and contrary to the contentions raised before the Court below and requested this Court to set aside the impugned order.

As seen from the order under challenge, the only reason for allowing the application is that “no objection” reported by learned counsel for the petitioner before the Court below. The counter filed by the first respondent running into three pages is placed on record, along with the affidavit filed by learned counsel appearing before the Court below submitting that he never reported “no objection” in allowing such application.

Though notice was served on the 1st respondent, none appeared and proof of service is also filed.

Even as per the counter, filed before the Court below, the petitioner strongly opposed the application raising several contentions, but without advertng to the contentions urged in the counter, the Court below simply recorded that learned counsel reported no objection and allowed the application.

The application was filed under Order 32 Rule 1 C.P.C. Order 32 C.P.C. deals with suits by or against minors and Rule 1 prescribes the procedure for filing such suits represented by guardian. At best when the 1st respondent intend to prosecute the proceedings, the necessary procedure prescribed under Rule 32 of Civil Rules of Practice has to be followed by filing an affidavit verifying that the authorization was subsisting to prosecute the proceedings on behalf of the original plaintiff. The Court below even without verifying the nature of the suit, simply allowed the application as if it is an application filed under Order 32 Rule 1 C.P.C. which deals with filing a suit represented by minor guardian. Thus, the impugned order passed by the Court below is totally without application of mind and it is a cryptic order, which deserves to be set aside by exercising jurisdiction under Article 227 of the Constitution of Indian.

Accordingly, the civil revision petition is allowed setting aside the order dated 02.06.2016 in I.A.No.103 of 2016 in O.S.No.42 of 2015 passed by the Principal District Judge, Khammam. However, the matter is remanded to the District Judge with a direction to dispose of the petition in accordance with law after affording reasonable opportunity to both parties and advert to the contentions raised both in the petition and counter of the parties and answer such relevant contentions in accordance with law within two months from the date of receipt of a copy of this order. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

05.01.2018
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JUSTICE M. SATYANARAYANA MURTHY

