

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.M.P.No.8768 of 2017

In/and

CIVIL REVISION PETITION No.6214 of 2017

ORDER :

This Revision is filed assailing the order dt.25-10-2017 in E.A.No.100 of 2017 in E.A.No.68 of 2010 in E.P.No.9 of 2010 in O.S.No.105 of 2008 of the III Additional District Judge, Tirupati.

2. For the sake of convenience, hereinafter the parties will be referred to as per their array in the Civil Revision Petition.

3. Petitioner's mother suffered a decree dt.15-10-2008 in O.S.No.105 of 2008 filed by 1st respondent against her for recovery of money.

4. Thereafter the 1st respondent filed E.P.No.9 of 2010 and attached certain property allegedly belonging to the deceased judgment-debtor.

5. The petitioner filed E.A.No.68 of 2010 under Order XXI Rule 58 C.P.C. claiming that the said property did not belong to the deceased judgment-debtor, but to the petitioner.

6. On the ground that the petitioner did not file her affidavit in lieu of chief-examination on 02-06-2017, the Court below dismissed E.A.No.68 of 2010.

7. Petitioner then filed E.A.No.100 of 2017 immediately thereafter stating that she had changed her counsel, as the previous counsel did not inform her about the actual date of hearing on 02-06-2017 to enable her to file the chief-examination affidavit, and therefore to restore E.A.No.68 of 2010.

8. The Court below rejected the same on 25-10-2017 by passing the impugned order.

9. It is contended by learned counsel for petitioner that there was no undue delay in filing the application for restoration by the petitioner of the claim petition; that substantive rights of petitioner in regard to the property in question are involved in the matter; that the Court below was not right in dismissing the same by relying upon the decision in a claim petition in a different suit O.S.No.9 of 2007 against which an appeal is pending in the High Court; and therefore the impugned order deserves to be set aside.

10. Learned counsel for 1st respondent, however, supported the order passed by the Court below.

11. A perusal of the order passed by the Court below reveals that the Court below did not accept the reason given by the petitioner that her advocate did not inform her about the date of hearing and had also relied upon the decision in the claim petition filed by petitioner in a different suit.

12. It is not unusual that sometimes counsel do not inform dates of hearing to parties. Substantive applications such as a claim petition in an Execution petition, cannot be allowed to be disposed of on the ground that affidavit in lieu of chief-examination is not filed on a specific date. No doubt, E.P. had been pending from 2010, but when the application to restore the claim petition was filed without undue delay, the Court below could have exercised its discretion and restored the claim petition instead of dismissing it on the said ground.

13. The other reason given by the Court below about the dismissal of another claim petition in a different suit as a reason for dismissing the application for restoration of the claim petition filed in this suit, is also unacceptable. The Court below cannot, while considering the application for restoration of the claim petition in the present suit, go into the merits of the claim of the petitioner and hold against the petitioner. In this view of the matter, I am of the opinion that the impugned order cannot be sustained.

14. This Court earlier in C.R.P.No.6214 of 2017 granted interim stay of all further proceedings in E.P.No.9 of 2010 on the file of III Additional District Judge, Chittoor, Chittoor District.

15. C.R.P.M.P.No.8768 of 2017 is filed to vacate the same.

16. Having regard to the reasons aforesaid, the impugned order dt.25-10-2017 in E.A.No.100 of 2017 in E.A.No.68 of 2010 in E.P.No.9 of 2010 is set aside; and E.A.No.100 of 2017 is remitted

back to the Court below to consider the same afresh uninfluenced by the order passed by it earlier, within two (02) months from the date of receipt of copy of this order. Both parties are directed to cooperate with the disposal of E.A.No.100 of 2017.

17. C.R.P.M.P.No.8768 of 2017 is accordingly dismissed and C.R.P.No.6214 of 2017 is allowed to the above extent. No costs.

18. The money already deposited by the petitioner shall abide by the final order to be passed in the E.A.

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

JUSTICE M.S.RAMACHANDRA RAO

Date : 23-02-2018

Vsv

