

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CIVIL REVISION PETITION No.6701 OF 2017

ORDER :

This Civil Revision Petition is filed by the petitioner represented through her GPA holder against order dated 24.10.2017 in C.M.A.No.3 of 2016, wherein the appellate Court dismissed the appeal filed by the petitioner for setting aside the order and decree dated 03.08.2016 in I.A.No.573/2014 in O.S.No.304/2008 passed by the I Addl.Junior Civil Judge's Court, Tanuku, wherein an application filed by the petitioner under Order 9 Rule 9 CPC for setting the order of dismissal of suit dated 25.11.2014 was dismissed.

Heard learned counsel for the petitioner, who submits that the petitioner was present on all the occasions and that on only one occasion, petitioner was not present. More so, I.A.No.227 of 2013 filed for amendment of the plaint was pending, the trial Court could not have dismissed the suit, which is filed for permanent injunction.

No doubt, the trial Court as well as appellate Court found that there is no valid reason justifying for non appearance of the learned counsel for the petitioner on 03.08.2016, on which day, the suit is posted. But the learned counsel for petitioner pleads that substantial rights of the petitioner are involved in respect of immovable properties and if the suit is not restored, petitioner will suffer irreparable loss.

Though notice is served on the respondents, there is no appearance on their behalf.

A perusal of the docket order of the trial Court goes to show that petitioner was not present only on 25.11.2014 and more so, I.A is also pending. Though this Court not find any infirmity or illegality in the order passed by the appellate Court as well as trial Court, since suit is filed for permanent injunction, one more opportunity can be given to the petitioner, to meet the ends of justice. Though this Court is of the opinion that heavy costs would have been imposed on the petitioner, but in spite of receiving costs, there is no representation on behalf of the respondent.

In view of above facts and circumstances, the impugned order of the appellate Court is set aside. The trial Court is directed to proceed with the suit after restoring the same and petitioner shall file chief affidavit of P.W.1 within a period of two weeks from the date of receipt of a copy of this order.

Accordingly, the Civil Revision Petition is allowed to the extent indicated above. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed.

A.RAJASHEKER REDDY, J

21-02-2018
kvs

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