

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.297 of 2019

ORDER :

Heard both sides.

2. This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.30.01.2019 passed in O.S.No.109 of 2013.

3. The petitioner herein is plaintiff in the above suit.

4. He filed the above suit for specific performance of an agreement of sale executed in his favour on 01.04.2005 by father of respondent nos.1, 3 and 4, and also for alternate relief.

5. Summons were served on respondents, but initially they did not file Written Statement. Therefore, the respondents were set *ex parte* on 11.10.2013.

6. Subsequently, an application under Order IX Rule 7 read with Section 151 of Civil Procedure Code, 1908 was filed by respondents which was allowed on 19.11.2013, and the order dt.11.10.2013 setting them *ex parte* was set aside.

7. Consequent thereto, the Written Statement filed by defendant nos.2 to 6 was received on 19.11.2013 itself since it had also been filed along with the application Order IX Rule 7 read with Section 151 of Civil Procedure Code, 1908.

8. Subsequently, the 2nd respondent / 4th defendant in the suit came before the Court below on 30.01.2019 and stated that she did not receive summons in the suit. Therefore, the Court below permitted her to file Written Statement on 11.02.2019.

9. Challenging this Docket Order passed by the Court below, the present Civil Revision Petition is filed.

10. On 14.02.2019, this Court granted *interim stay* of all further proceedings in the suit.

11. The counsel for petitioner contended that the plea of 4th defendant / 2nd respondent that she did not receive summons in the suit is a false plea, and relied upon the Certified Copy of the Process Server Report which showed that one Neeraj Prasad son of 4th defendant / 2nd respondent had received the summons. He also relied upon the 'Certified Copy' of the *Vakalat* filed on behalf of 2nd respondent / 4th defendant on 01.04.2013 as well as Written Statement filed by 4th defendant / 2nd respondent along with other defendant nos.2, 3, 5 and 6 on 19.11.2013 in the suit. He therefore contended that the Court below could not have blindly ignored the above circumstances and again permitted the 4th defendant / 2nd respondent to file another Written Statement.

12. Though Dr. T.P. Shailaja has filed *Vakalat* on behalf of 4th defendant / 2nd respondent on 05.03.2019 itself, there is no representation on behalf of 4th defendant / 2nd respondent.

13. I find considerable force in the contention of counsel for petitioner because if the 4th defendant / 2nd respondent had already received summons and also filed a Written Statement along with defendant nos.2, 3, 5 and 6 on 19.11.2013, she cannot be permitted to file another Written Statement by the Court below without there being any application to file an additional Written Statement and without hearing the petitioner.

14. The plea of 4th defendant / 2nd respondent that she did not receive the summons in the suit cannot be accepted in the light of the material placed on record by petitioner.

15. Therefore, the order dt.30.01.2019 passed in O.S.No.109 of 2013 permitting 4th defendant / 2nd respondent to file Written Statement is set aside; and the Court below is directed to treat the Written Statement already filed by her along with defendant nos.2, 3, 5 and 6 as her Written Statement also, and proceed further in the matter.

16. Accordingly, the Civil Revision Petition is allowed as above.
No order as to costs.

17. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 26.06.2019

Ndr/*