

HIGH COURT FOR THE STATE OF TELANGANA

**THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND**

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

C.M.A.No.600 of 2019

Date: 01.07.2019

Between:

G. Venkata Raju

... Appellant

and

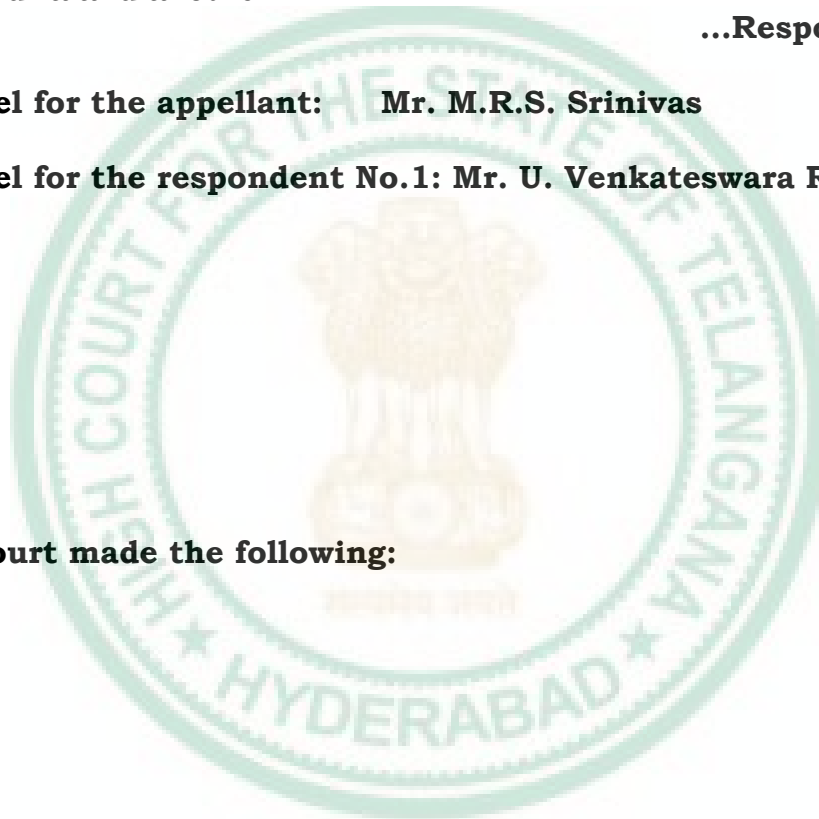
Smt. Indira and another

...Respondents

Counsel for the appellant: Mr. M.R.S. Srinivas

Counsel for the respondent No.1: Mr. U. Venkateswara Rao

The Court made the following:



Judgment: *(per Hon'ble Sri Justice Raghvendra Singh Chauhan)*

The appellant has challenged the legality of the order dated 18.04.2019, passed by the I Additional District and Sessions Judge, Medak at Sangareddy, whereby the learned Judge has dismissed I.A.No.135 of 2019 in I.A.No.879 of 2017 in O.S.No.69 of 2015.

Briefly, the facts of the case are that, the appellant, who is defendant No.2 in the Original Suit, had filed I.A.No.135 of 2019 under Order IX Rule 9, read with Section 151 C.P.C. for setting aside the dismissal order dated 25.03.2019. Despite giving ample opportunities to the appellant and in spite of imposing a cost of Rs.200/-, the appellant failed to pay the said amount. Therefore, the said order was passed.

According to the impugned order, a suit for specific performance was filed by the respondent No.1-plaintiff. Although notice was issued to the appellant-defendant No.2, he refused to accept the notice on 19.10.2015. Therefore, the proceedings were carried out *ex-parte*. Eventually, by judgment dated 27.10.2016, the suit was decreed in favour of the respondent No.1-plaintiff. Subsequently, the appellant filed I.A.No.879 of 2017 for setting aside the *ex-parte* judgment and decree dated 27.10.2016, and for seeking condonation of delay of 413 days. According to the learned Judge, the I.A. was heard on 18.03.2019. But there was no representation from the side of the appellant. Therefore, the case was adjourned for 20.03.2019. Even on 20.03.2019,

there was again no representation from the side of the appellant. Therefore, the costs of Rs.200/- was imposed on the appellant, and the case was adjourned for 25.03.2019. However, on 25.03.2019, no one appeared on behalf of the appellant. Therefore, the I.A. was dismissed. Hence, this appeal before this Court.

Mr. M.R.S. Srinivas, the learned counsel for the appellant, has vehemently pleaded that an opportunity to establish his case should be given to the appellant, as he is the defendant No.2 in the suit for specific performance. Thus, the impugned order deserves to be set aside by this Court. He further pleads that on 25.03.2019, since the father of the appellant's advocate was unwell, the advocate could not attend the Court. Therefore, for the fault of the advocate, a party cannot be made to suffer.

On the other hand, Mr. U. Venkateswara Rao, the learned counsel for the respondent No.1-plaintiff, submits that the decree was passed in the year 2016. The decree was an *ex-parte* one, as the appellant had refused to accept the notice sent by the learned trial Court. Therefore, from 2016 till present, the appellant was well aware of the fact that the suit was filed against him. Even after passing of the decree, the learned trial Court had given ample opportunities to the appellant. But, he has never taken the benefit of these opportunities. Even on 18.03.2019 and 20.03.2019, the

appellant was absent. Hence, the learned Judge was justified in dismissing the application filed by the appellant.

Heard the learned counsel for the parties, and perused the impugned order.

It is, indeed, trite to state that the litigant has to be vigilant about his rights. The litigant who sleeps over the rights cannot and should not expect the Court to come to his rescue. According to the learned trial Court, it is the appellant, who had refused to accept the notice. Therefore, the appellant cannot claim that he had no knowledge of the pendency of the original suit. Moreover, according to his application filed before the learned trial Court, the appellant claims that although there was a paper publication of the notice, he has not noticed the same. However, once a paper publication is made, the notice is deemed to be served upon the litigant. Even otherwise, once the application was filed by the appellant, the learned trial Court gave him an ample opportunity to argue his application. But, despite the repeated opportunities, the appellant failed to appear before the learned trial Court. Even if the appellant claims that his advocate's father was ill on 25.03.2019, there is no medical certificate to prove the same. Even if this statement were to be accepted, there was no explanation for his non-appearance on 18.03.2019 and on 20.03.2019 before the learned trial Court. Therefore, the appellant cannot be permitted to re-

open the original suit which was decided in 2016 after the passage of three years.

For the reasons stated above, this Court does not find any illegality or perversity in the impugned order. This appeal being devoid of any merit is, hereby, dismissed.

As a sequel, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(RAGHVENDRA SINGH CHAUHAN, CJ)

(Dr. SHAMEEM AKTHER, J)

Date: 01.07.2019

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