

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.1447 of 2019

ORDER :

This Revision is filed challenging the order dt.09-04-2019 in I.A.No.338 of 2019 in O.S.No.871 of 2015 of the II Additional Chief Judge, City Civil Court at Hyderabad.

2. Petitioner herein is defendant in the said suit.
3. Respondent/plaintiff filed the said suit against petitioner for cancellation of an agreement of sale-cum-G.P.A., recovery of possession and recovery of money.
4. After several attempts to serve notice on petitioner failed by way of registered post and through Process Server, the Court below permitted paper publication in Telugu daily newspaper Andhra Jyothi fixing the date of appearance of petitioner as 27-12-2016.
5. Since the petitioner did not appear on 27-12-2016, he was set *ex parte* and on 04-01-2017, the evidence on the side of respondent was recorded, and then the matter was posted for pronouncement of judgment.
6. At that stage, on 08-03-2019, petitioner filed I.A.No.338 of 2019 to set aside the order dt.27-12-2016 setting the petitioner *ex parte* invoking Order IX Rule 7 C.P.C.

7. In the affidavit filed in support of the said application, he stated that he does not know Telugu language and the substitute service was taken out in a Telugu newspaper, which he cannot read, and he came to know from one Shaheen Fareed about the present suit on 06-03-2019 and so the said order dt.27-12-2016 be set aside and he be given an opportunity to contest the suit on merits.

8. Counter-affidavit was filed by respondent contending that petitioner is a well known mischief monger, who has cheated many persons, and that petitioner had no respect for the truth or for law. It is alleged that petitioner is mentioning about issuance of notice through paper publication, but he has not stated how he came to know about it. It is alleged that petitioner was following the case continuously but deliberately stayed away and filed this application which is an abuse of process of the Court. The respondent did not dispute that summons were not served on petitioner.

9. By order dt.09-04-2019, the Court below dismissed the said application. It recorded that process sent through Court were not served on the petitioner at the address given, and the summons sent through post were also returned undelivered without any proper endorsement of the Postal Department. Even summons sent through Courier was unserved, and only thereafter paper publication in Telugu newspaper Andhra Jyothi was ordered fixing the date of appearance of petitioner as 27-12-2016. It observed that ample opportunity was given to the petitioner for his appearance before the Court and it is not

his case that he was not residing in the given address and he did not state where he was staying. It also observed that petitioner did not state how he came across the paper publication in Andhra Jyothi Telugu daily newspaper and therefore the application was liable to be dismissed.

10. Assailing the same, this Revision is filed.

11. Ms.Manasi Ganu, learned counsel appearing for Sri Sunil B.Ganu, learned counsel for petitioner contended that petitioner did not know Telugu language, and publication of notice of the suit in Telugu daily newspaper, would not amount to proper service of summons on petitioner; process sent by Court through Registered post and Courier were also not served and there was no service of summons at all on petitioner, and respondent had tried to get an *ex parte* decree against the petitioner behind petitioner's back without properly taking steps to serve summons on him.

12. Sri Mohd.Osman Shaheed, learned counsel for respondent refuted the said contentions and supported the order passed by the Court below. According to him, petitioner evaded service of summons and he had not shown any different address than given in the plaint, and in normal course, through post or otherwise the summons would have been served on him. He contended that because petitioner was a mischief monger he evaded service of such summons.

13. I have noted the contentions of both sides.

14. It is not in dispute that the summons sent through Court or by registered post or through Courier had been returned unserved. Only then paper publication was ordered in Telugu daily news paper Andhra Jyothi for appearance of petitioner on 27-12-2016. It is not the case of respondent that petitioner knows Telugu language and he is able to read what is contained in the Telugu news paper.

15. So I hold that the Court below is not correct in stating that ample opportunity was given to the petitioner for his appearance before the Court.

16. Its further observation that it was not the case of petitioner that he was not residing in the given address, also cannot be accepted, since it was the duty of the Court to ensure that summons are served at the address given in the plaint.

17. In these circumstances, the order dt.09-04-2019 in I.A.No.338 of 2019 in O.S.No.871 of 2015 of the II Additional Chief Judge, City Civil Court, Hyderabad is set aside and the said I.A. is allowed. The Court below shall give opportunity to the petitioner to file a written statement in the suit, and both parties shall be permitted to lead evidence and then judgment shall be pronounced in accordance with law. Since the suit is an old suit of 2015, the Court below shall endeavour to expeditiously dispose it off.

18. The Civil Revision Petition is allowed with the above directions. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-07-2019

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