

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
CIVIL REVISION PETITION No.2146 OF 2019

ORDER:

This revision, under Section 115 of the Civil Procedure Code, is filed by the petitioner/defendant aggrieved by the order dated 30.07.2019 passed in I.A.No.886 of 2018 in O.S.No.445 of 2017 by the learned Special Sessions Judge for Trial of Cases under SCs & STs (PoA) Act-cum-VII Additional District Judge, Ranga Reddy District at L.B. Nagar, whereby, the application filed by the revision petitioner/defendant, under Section 5 of Limitation Act read with Section 151 of CPC, to condone the delay of 378 days in filing the petition, under Order IX Rule 13 read with Section 151 of CPC, to set aside the *ex parte* decree dated 30.08.2017, was dismissed.

2. Heard learned counsel for the revision petitioner/defendant, learned counsel for the respondent and perused the record.

3. Learned counsel for the revision petitioner/defendant would contend that summons was not served to the defendant in the Original Suit. Learned counsel produced a photocopy of the summons with an endorsement *vide* memo dated 06.11.2019 and contended that Process Server concerned has not followed the requirements under Order V Rule 9 of CPC read with Rule 77 of Civil Rules of Practice. The plaintiff ought not have identified the person in whose name summon was taken. Moreover, the Process Server ought not have allowed the plaintiff to identify the person in question, in fact there is no service of summons.

When the revision petitioner/defendant received summons in the execution proceedings, he came to know about the passing of *ex parte* decree in a suit for specific performance of agreement of sale. Thus, delay in filing the subject application occurred. The Court below ought to have condoned the said delay. The impugned order passed by the Court below is erroneous and ultimately prayed to set aside the impugned order and allow the Civil Revision Petition as prayed for.

4. On the other hand, learned counsel for the respondent/plaintiff would submit that there is valid service of summons in terms of Order V Rule 9 of CPC read with Rule 77 of Civil Rules of Practice. The signature of the defendant and the signature appearing on the service of summons be sent to the expert to find out the truth or otherwise of the service of summons. Rule 77 of Civil Rules of Practice has been complied with. It is contended that the address given in the Original Suit as well as in the E.P. is one and the same. Therefore, there is valid service. The Court below is justified in passing the impugned order and ultimately prayed to dismiss the revision petition.

5. As seen from the record, the subject application was filed to condone the delay of 378 days on the principal ground of non-receipt of summons in the Original Suit. The question is whether the summons in the Original Suit was served on the revision petitioner/defendant or not. In the instant case, the revision petitioner/defendant is said to have been identified by

the respondent/plaintiff. There is an endorsement to that effect. The revision petitioner/defendant was not examined by any other third person.

Rule 77 (i) of Civil Rules of Practice, envisages service of process, which reads as under:-

“The Serving Officer shall see that the person who accepts service of the process corresponds with the description given in the process. Where the signature in token of acceptance differs from the name given in the process, the discrepancy shall be explained.”

6. In the instant case, the Serving Officer did not undertake to examine the person in whose name summons was taken by a third person. The summons is required to be served on the defendant. Under these circumstances, there was no need for the Serving Officer to go to the plaintiff and get him to the house of the defendant. The Serving Officer ought to have gone independently to the address given in the summons and made efforts to find out the person, who accepts the service of summons corresponds with the description given in the summons without taking service of the plaintiff. The Serving Officer committed error in taking help of the plaintiff to serve the summons. The question would also emerge that whether the plaintiff had pointed out right person or not, in whose name, the summons was issued. Prima facie, the Serving Officer erred in taking the service of plaintiff and making efforts in serving the summons issued in the Original Suit. He ought not have conducted such an exercise at all. Here, obtaining the signature of the defendant and sending the same with the signature found

on the summons form, is not necessary. The role played by the respondent/plaintiff in service of summons in the Original Suit is unwarranted. The Serving Officer ought to have identify the person who accepts the service of summons through third parties to the suit in terms of the provision under Rule 77 (i) of Civil Rules of Practice. In the circumstances of the case, it is held that there is no service of summons on the revision petitioner in the Original Suit. The explanation given by the revision petitioner/defendant for the delay in filing the petition, under Order IX Rule 13 read with Section 151 of CPC, is sustainable. The Court below ought to have condoned the delay as prayed for in the subject Interlocutory Application. So, the impugned order is liable to be set aside.

7. Accordingly, the impugned order, dated 30.07.2019 passed in I.A.No.886 of 2018 in O.S.No.445 of 2017 by the learned Special Sessions Judge for Trial of Cases under SCs & STs (PoA) Act-cum-VII Additional District Judge, Ranga Reddy District at L.B. Nagar, is set aside. Consequently, I.A.No.886 of 2018 stands allowed as prayed for.

8. The Civil Revision Petition is, accordingly, allowed. No costs.

The Miscellaneous Petitions, if any, pending shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 06.12.2019
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