

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.6539 of 2018

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.02.08.2018 in I.A.No.784 of 2017 in O.S.No.110 of 2010 on the file of XIII Additional District and Sessions Judge, Ranga Reddy District, L.B. Nagar.

The petitioners herein are defendant Nos.1 and 2, respondent No.1 is the plaintiff and respondent No.2 is defendant No.3 in the suit O.S.No.110 of 2010.

Respondent No.1 had filed the said suit for declaration of title, recovery of possession and for future profits, apart from mandatory injunction.

Written Statement was filed by the petitioners opposing the suit claim.

The suit was posted to 06.07.2017 for evidence of respondent No.1/plaintiff and because respondent No.1 and her counsel were both absent, the suit was dismissed for default on 06.07.2017.

Immediately, within 30 days from the said event, on 04.08.2017, counsel for respondent No.1 had filed I.A.No.784 of 2017 under Order 9 Rule 9 C.P.C., to set aside the said order dt.06.07.2017 and restore the suit.

In the affidavit filed by the counsel for respondent No.1 in the said I.A., it was contended that the counsel was held up on 06.07.2017 before the Court of XV Additional District Judge, Ranga Reddy District at Miyapur in O.P.No.820 of 2014, and by the time he reached the Court of XIII Additional District and Sessions Judge, Ranga Reddy District, L.B. Nagar, where O.S.No.110 of 2010 was pending, the said suit was called and dismissed for default and, therefore, he sought for setting aside of the order dt.06.07.2017.

The Court below then passed an order dt.02.08.2018 in I.A.No.784 of 2017 in O.S.No.110 of 2010 restoring the suit on payment of costs of Rs.500/- to the District Legal Services Authority, stating that respondent No.1 and her counsel both were absent, and there was no reason as to why respondent No.1 was also absent on that day. However, it observed that endeavour of the law is to see that the matter should be disposed of on merits rather than exparte, and so while imposing costs, it has restored the suit by setting aside the order dt.06.07.2017.

Assailing the same, this Civil Revision Petition is filed.

Learned counsel for the petitioners contended that no notices in I.A.No.784 of 2017 were issued to the petitioners by the counsel for respondent No.1 in the Court below and without giving an opportunity to the petitioners to contest the said I.A., it was allowed. It is also contended that the notices in the said I.A. were sent to the wrong addresses, instead of

sending the same to the correct addresses of the petitioners, as mentioned under item No.1 of the suit schedule property; and deliberately wrong address was mentioned. It is also contended that substituted service was carried out in the Newspapers, which did not have significant circulation and the same cannot be treated as a valid substituted service; and hence grave prejudice has been caused to the petitioners by the impugned order dt.02.08.2018. A further contention is also raised stating that instead of filing affidavit by respondent No.1/plaintiff in I.A.No.784 of 2017, the counsel for respondent No.1 had filed affidavit.

Learned counsel for respondent No.1/plaintiff had refuted the said contentions and pointed out that the counsel for respondent No.1 before the Court below did attempt to serve notice on the counsel for the petitioners; that notices in I.A.No.784 of 2017 were sent to the correct address and substituted service was also carried out subsequently. He also pointed out that when counsel for respondent No.1 could not appear before the Court below at the time when the suit was called, the suit was dismissed for default and, therefore, the counsel for respondent No.1 had rightly filed affidavit in I.A.No.784 of 2017.

I have noted the contentions of the respective parties.

The relief sought for in the suit is for declaration of title, recovery of possession, mandatory injunction etc., in respect of the immovable property and so the stakes in the suit are

high. On the ground that the counsel for respondent No.1 was not present when the matter was called on 06.07.2017 and the evidence of respondent No.1 also did not commence, the Court below dismissed the suit for default.

Taking the responsibility for his absence when the matter was called, within a reasonable time of 30 days, I.A.No.784 of 2017 was filed by the counsel for respondent No.1 stating that he was arguing another matter in the Court of XV Additional District Judge, Ranga Reddy District at Miyapur, and there was some delay in reaching the Court of XIII Additional District and Sessions Judge, Ranga Reddy District, L.B. Nagar, by which time the suit was called and dismissed for default for his absence.

Sometimes, these difficulties do crop up for lawyers and, therefore, there is nothing wrong in filing affidavit in I.A.No.784 of 2017 by the counsel for respondent No.1, instead of filing affidavit by respondent No.1.

I am also of the opinion that the presence of respondent No.1 would not be of any help, because evidence would normally be recorded in the presence of the counsel for the parties; and since there is no undue delay in filing I.A.No.784 of 2017, the petitioners cannot complain of causing any serious prejudice, when they are adequately compensated by way of costs. However, in the facts and circumstances of the case, respondent No.1 is directed to pay additional costs of

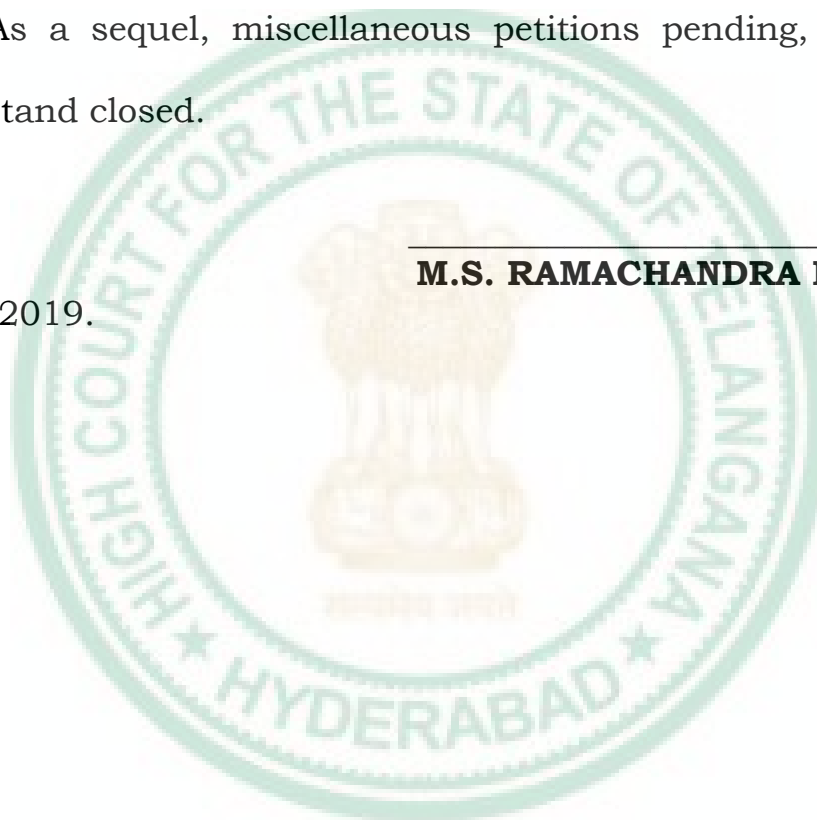
Rs.1,000/- (Rupees one thousand only) to the counsel for the petitioners in the Court below as a further compensation.

With the above observations, the Civil Revision Petition is disposed of and the order dt.02.08.2018 in I.A.No.784 of 2017 restoring the suit O.S.No.110 of 2010 is sustained. It is made clear that the above said costs shall be paid within a period of two weeks from the date of receipt of a copy of this order.

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

M.S. RAMACHANDRA RAO, J

14.03.2019.
Msr



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