

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.M.A.No.1363 of 2018

JUDGMENT:

This Appeal is filed challenging the order dt.12.10.2018 in I.A.No.2826 of 2018 in AS.No.17 of 2015 of the III Additional Chief Judge, City Civil Court, Hyderabad.

2. Initially, suit O.S.No.521 of 2008 was filed by the 1st respondent against sole defendant for declaration of his title to the plaint schedule property and for his eviction.

3. During the pendency of said suit, the sole defendant died and the appellant/3rd defendant and respondents 2 to 5 /defendants 2, 4 to 6 were brought on record as his LRs., vide orders in I.A.No.32 of 2012 dt.12.04.2012.

4. The said suit was decreed on 29.10.2014 by the Additional Judge-cum-VI Senior Civil Judge, City Small Causes Court, Hyderabad.

5. Challenging the said decree, appellant and respondents 2 to 5 filed A.S.No.17 of 2015 before the III Additional Chief Judge, City Civil Court, Hyderabad.

6. The said Appeal came up for hearing on 20.07.2018.

7. Counsel for the appellant and respondents 2 to 5 was not present on that day and it was dismissed for default on 20.07.2018.

8. On 17.08.2018, within 30 days from the said event, appellant and respondents 2 to 5 filed I.A.No.2826 of 2018 to restore the appeal invoking Order XLI Rule 19 CPC. They contended that their counsel had to travel from Hyderabad to Haridwar along with his son in connection with the admission process of his son at a University there, since his son got seat in B-Tech Computer Science and Engineering course in the counseling conducted, and so he could not be physically present and argue the appeal, when it was listed for hearing on 20.07.2018.

9. Counter affidavit was filed by the 1st respondent opposing the said application and taking the plea that the appellant and respondents 2 to 5 have been dragging on the matter from 2015 till 2018 and that the conditional stay order dt.22.01.2016 passed in I.A.No.226 of 2015 was not complied with.

10. By order dt.12.10.2018, the Court below dismissed the said I.A. It observed that on 20.07.2018, when the appeal was listed for hearing, the appellant and respondents 2 to 5

did not represent their case in person or through counsel and even prior there to also, there was no representation on their behalf. It observed that counsel for the appellant ought to have informed the appellant and respondents 2 to 5 to represent the case on 20.07.2018 before the Court and that the ground of non-availability of their counsel at Hyderabad cannot help their case.

11. Challenging the same, this Appeal is filed.

12. Heard both sides.

13. The fact that the suit is decreed and appeal is pending before the lower Appellate Court is not in dispute.

14. There is no requirement of law that the appellants in the appeal should be present when the appeal is taken up for hearing because having engaged a counsel who has to argue the appeal, the appellants need not be physically present in the Court.

15. When the counsel engaged by the appellants in the appeal could not be present on 20.07.2018, because he has to admit his son in Engineering Course in a University at Haridwar; and the application for restoration of the appeal, (which had been dismissed for default on 20.07.2018) is filed

within 30 days from that date, the Court below ought to have taken into account the difficulty of the appellants and their counsel in arguing the appeal on 20.07.2018 and set aside its order dismissing the appeal for default.

16. The Court below, in my considered opinion, ought not to have taken into account the earlier adjournments granted in the appeal while considering, whether or not to set aside the order dt.20.07.2018 passed by it, because only the cause for absence on that day is required to be gone into. Also its view that the appellants should have represented the appeal if their counsel was not present on 20.07.2018, is not correct, since the parties would require their counsel to appear and argue the matter. If they are so capable of undertaking their own case, they would not have had to engage a counsel at all. Therefore, the impugned order cannot be sustained.

17. Accordingly, this Civil Miscellaneous Appeal is allowed; the order dt.12.10.2018 in I.A.No.2826 of 2018 in AS.No.17 of 2015 of the III Additional Chief Judge, City Civil Court, Hyderabad is set aside; and the said I.A. is allowed. The Court below is directed to decide the said appeal by 31.07.2019 and both parties shall cooperate with the Court for early disposal of the said appeal. No order as to costs.

18. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

08th April, 2019.

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