

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

Civil Miscellaneous Appeal No.836 of 2005

JUDGMENT:

This Civil Miscellaneous Appeal, under Order 43 Rule 1 of CPC, is filed by the appellant/defendant No.2 aggrieved by the order, dated 08.08.2005, passed in I.A.No.474 of 2005 in I.A.No.282 of 2002 in O.S.No.1372 of 1998 by the learned VII Senior Civil Judge, City Civil Court, Hyderabad, wherein the application filed by the appellant/defendant No.2 under Order IX Rule 13 read with Section 151 of CPC to set aside the *ex parte* decree passed against him, was dismissed.

2. Heard learned counsel for the appellant/defendant No.2, learned counsel for the respondent No.1/plaintiff and perused the record.

3. Learned counsel for the appellant/defendant No.2 would contend that the appellant was very much present at his native place and no notice was served on him. A notice published in Janatha Daily Newspaper for appearance of the appellant has no circulation. The appellant has no knowledge of passing of *ex parte* decree against him. Having come to know about the same, the appellant filed the subject Interlocutory Application to set aside the *ex parte* decree passed against him, but the Court below had erroneously dismissed the subject Interlocutory Application and ultimately, prayed to set aside the impugned order and allow the Appeal as prayed for.

4. On the other hand, learned counsel for the respondent No.1 would contend that the name of the appellant was published in Janatha Daily Newspaper. In spite of publication of notice in newspaper, there was no representation on behalf of the appellant. Hence, the appellant was set *ex parte* on 11.12.2000 and thereafter, the suit was decreed. There is no illegality to set aside the impugned order dated 08.08.2005 and ultimately prayed to dismiss the appeal.

5. The specific case against the appellant is that he is defendant No.2 in the main suit and guarantor for the loan facility extended to defendant No.1. There is no dispute with regard to the publication in Janatha Daily Newspaper. There is no material to hold that Janatha Daily Newspaper has no circulation at the place of the appellant. The address mentioned in the plaint and the address mentioned in the subject Interlocutory Application is one and the same. Summons were sent to the given address. The record indicates that registered notice sent to the appellant was served to one of his family members, namely, A.Meena. Therefore, it cannot be contended that the appellant has no knowledge about the proceedings of the suit in O.S.No.1372 of 1998. All the contentions raised by the appellant are unsustainable. Further, the Court below had elaborately dealt with these contentions and rightly dismissed the subject Interlocutory Application by assigning reasons. There is no illegality in the impugned order to take a different view. The appeal is devoid of merit and is liable to be dismissed.

6. In the result, the Civil Miscellaneous Appeal is dismissed.

No costs.

Pending miscellaneous petitions, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 28.01.2020
ssp

