

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE TWENTY FOURTH DAY OF JUNE
TWO THOUSAND AND TWENTY TWO**

**PRESENT
THE HONOURABLE SMT JUSTICE P.SREE SUDHA**

CIVIL REVISION PETITION NO: 1416 OF 2021

Petition under Article 227 of Constitution of India, aggrieved by the Order dated 13/08/2021 in IA No.76 of 2020 in OS No.2791 of 2019 on the file of the Court of the Honourable III Junior Civil Judge, City Civil Court, Hyderabad.

Between:

Sri. Madan Mohan, S/o. Nagabhushanam, aged about 56 years, 32A, Mezzanine Floor, Raghava Ratna Towers, Chirag Ali Lane, Abids, Hyderabad

**...PETITIONER/ RESPONDENT/
PETITIONER/ DEFENDANT**

AND

Dr. Chamundeshwari, D/o Late Mr. N.S. Sundara Murthy, represented by her Power of Attorney, S. Jayalakshmi, W/o, Late N.S. Sundara Murthy, aged about 73 years, resident of 19 (Old No.10), Harrington Road, II Avenue, Chetput, Chennai

...RESPONDENT/ PLAINTIFF

IA NO: 1 OF 2021

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to Stay all further proceedings in O.S.No.2791/2019, on the file of the III Junior Civil Judge, City Civil Court, Hyderabad.

For the Petitioner : SRI R.A.ACHUTHANAND, Advocate

For the Respondent : SRI DAMODAR MUNDRA, Advocate

The Court made the following: ORDER

THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

CIVIL REVISION PETITION No.1416 OF 2021

ORDER:-

1. Heard both the counsel.
2. This Civil Revision Petition is filed against the orders of the trial Court dated 13.08.2021 in I.A.No.76 of 2020 in O.S.No.2791 of 2019, on the file of the III Junior Civil Judge Court, City Civil Court at Hyderabad. Petitioner herein filed an application before the trial Court under Order IX Rule 7 read with 151 C.P.C. to set-aside the ex-parte order dated 23.12.2019. He mainly contended that he found torn summons outside the office premises and thus approached the counsel and the counsel on verification, found that he was set ex-parte on 23.12.2019. As such, he approached the Court and filed an application in I.A.No.76 of 2020 on 18.02.2020 to set-aside the said ex-parte order dated 23.12.2019.
3. In the counter filed by the respondent, it was contended that the application is filed only to prolong the litigation and he was watching the proceedings. Respondent is a permanent resident of Chennai and aged 90 years. She came to the Court twice for giving evidence and after recording her evidence, the matter is posted for judgment. At that stage, he came up with this application and the same is liable to be dismissed.

4. The trial Court, after considering the arguments on both sides, dismissed the application in I.A.No.76 of 2020. Aggrieved by the said order, this Civil Revision Petition is preferred.

5. The learned counsel for the petitioner mainly contended that he has shown good cause under order IX Rule 7 read with Section 151 of CPC for his non-appearance before the Court and he also stated that summons were not duly served upon him. As per the report of the process server, they were affixed to the door by mentioning as door locked. But the said process server and counsel were not examined before the Court and the counsel also stated that instead of issuing second notice, the Court proceeded further and set him ex-parte without giving him a reasonable opportunity. As such, requested the court to set-aside the order of the trial Court.

6. The trial court also considered the judgments of the Hon'ble Supreme Court and specifically mentioned that the petitioner has not mentioned the date on which he found torn summons during the period from 20.12.2019 till 18.02.2020; whether the office was closed or not and observed that he has not shown good cause and it was also observed that as the suit is concluded and already posted for judgment, the said

application under order IX Rule 7 read with Section 151 C.P.C. has no application and accordingly, dismissed.

7. The counsel for the respondent stated that O.S.No.2791 of 2019 is filed for recovery of arrears of enhanced rent. In fact, the petitioner herein preferred an Appeal vide RA.No.119 of 2019 against the orders of the Rent Controller and it was decreed in their favour. As such, they filed another suit vide O.S.No.2719 of 2019 for recovery of the amount, but he could not appear. In spite of granting sufficient opportunity, he was set-ex-parte.

8. The Daily status report of the trial Court shows that I.A.76 OF 2020 was filed on 18.02.2020, PW1 was examined on 05.02.2020, defendant was set ex-parte on 23.12.2019 and it is posted for judgment to 05.03.2020. It was observed in the docket order that I.A.No.76 of 2020 was filed on 18.02.2020, but after giving several adjournments, the said I.A. was dismissed on 13.08.2021. Against the said dismissal order, this Civil Revision Petition is preferred.

9. The process server in his report stated that he went to the address of the defendant on 10.12.2019, 13.12.2019 and 20.12.2019, but the defendant premises was door locked. As such, he affixed the summons copy on the premises.

10. Learned counsel for the respondent stated that though the summons were affixed on 20.12.2019, the petitioner herein stated that he approached the counsel after two months with torn summons on 18.02.2020 and he has not stated any reasons for closing of the office on the above three dates.

11. Both the counsel also relied upon several citations and also argued regarding the relevant provisions of the Act.

12. Admittedly, the summons were affixed outside the office premises but not served upon the petitioner. As such, he approached the counsel after two months and then he filed I.A.76 of 2020 to set-aside the ex-parte order. In the report of the process server, the details of the premises with door number are not mentioned and he was not examined by the trial Court. Moreover, when the application is filed to set aside the ex-parte order on 18.02.2020, it was dismissed on 13.08.2021.

13. The trial Court mainly observed that the plaintiff in the suit is aged 90 years. She came from Chennai twice to the Court but the defendant could not appear and came up with this application only to prolong the litigation. Admittedly, the petitioner is a tenant. But the cardinal principle is that a suit is to be disposed of on merits by duly giving an opportunity to

both sides. In this case, there is no due service of summons to the petitioner herein and even the trial Court kept it pending for more than 1 ½ year. Therefore, I find that it is just and reasonable to set-aside the order of the trial Court.

14. In the result, the Civil Revision Petition is allowed setting aside the order of the trial Court dated 13.08.2021 in I.A.No.76 of 2020 in O.S.No.2791 of 2019, on the file of the III Junior Civil Judge Court, City Civil Court at Hyderabad. Petitioner herein is directed to file written statement and also to cooperate with the disposal of the suit without asking for any adjournment as the plaintiff in the suit is aged about 90 years. The trial Court is directed to dispose of the matter within three months from the date of receipt of copy of this order. There shall be no order as to costs.

15. Miscellaneous petitions, if any pending, shall stand closed.

//TRUE COPY//

Sd/-B.SATYAVATHI
DEPUTY REGISTRAR

SECTION OFFICER

To

1. The III Junior Civil Judge, City Civil Court, Hyderabad.
2. One CC to Sri R.A.Achuthanand, Advocate (OPUC)
3. One CC to Sri Damodar Mundra, Advocate (OPUC)
4. Two CD Copies
5. One Spare Copy

Kj.

[Handwritten signature]

HIGH COURT

DATED:24/06/2022



ORDER

CRP.No.1416 of 2021

CRP IS ALLOWED.

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20/7/22
HVJ