

(2004) 04 AP CK 0065

In the Andhra Pradesh High Court

Case No : CRP No's. 6120, 6122 and 6123 of 2003

Nizamuddin Peer Ahmed

APPELLANT

Vs

M. Nageshwar Rao

RESPONDENT

Date of Decision : 27-04-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 4

Citation : (2004) 3 ALD 562 : (2004) 4 ALT 195

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Wasim Ahmed Khan, for the Appellant; D. Madhava Rao, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—These three revisions are filed by the same petitioner, aggrieved by identical orders passed by the Court of the I Additional Junior Civil Judge, City Civil Court, Secunderabad in I.A. Nos. 123, 124 and 125 of 2003 filed under Order 37, Rule 4 of the Code of Civil Procedure, to set aside the decrees dated 8-1-2003 in O.S. Nos. 927, 929 and 928 of 2001 respectively.

2. The respondent filed the above three suits against the petitioner for recovery of certain amounts on the strength of individual pro-notes. After the summons were served, the respondent filed applications under Order 37, Rule 3 C.P.C. for summary procedure. Since there was no response from the petitioner, the trial Court proceeded to decree the suits on 8-1-2003, as provided for under the said provision.

3. Petitioner filed the applications under Rule 4 of Order 37 C.P.C., to set aside the respective decrees. He pleaded that he has been suffering with jaundice at the relevant point of time and as such he could not instruct his Counsel to take steps. He also pleaded that summons under Rule 3 of Order 37 C.P.C. were served on his advocate and he was not aware of the same. The applications were

resisted by the respondent. On consideration of the respective pleas, the Trial Court dismissed the petitions through its order dated 4-9-2003.

4. Heard learned Counsel for the petitioner and the learned Counsel for the respondent.

5. The respondent filed three separate suits against the petitioner for recovery of certain amounts. According to him, the suits are based upon promissory notes and as such the procedure under Rule 3 of Order 37 can be adopted. In that view of the matter, soon after the summons were served upon the petitioner herein, he filed applications under Rule 3 of Order 37 C.P.C. It is not in dispute that by the time these applications were filed, the petitioner entered appearance and the copies of this application were served on the Counsel for the petitioner and not on the petitioner himself. Since the response contemplated under Rule 3 was not forthcoming from the petitioner, the Trial Court was left with no alternative except to decree the suits.

6. The petitioner contends that neither he was served with application filed under Rule 3 Order 37 CPC nor he was aware of the filing of the same. He also pleads that he has been suffering from jaundice. These submissions did not weigh with the Trial Court. It took the view that the petitioner was not able to plead any special circumstances as provided for under Rule 4 Order 37 CPC. Reliance was placed upon the judgment of this Court in Karumilli Bharathi Vs. Prichikala Venkatachalam, .

7. The expression "special circumstances" employed in Rule 4 of Order 37 CPC cannot be defined nor confined to any particular circumstance. What constitutes "Special Circumstance" in each case depends on the facts and circumstances of that particular case. The petitioner specifically pleaded that he has been suffering with jaundice at the relevant point of time. Procedure prescribed under Order 37 being special, placing burden upon the defendants, needs to be followed strictly. Any interpretation of the provision should be in such a way as to protect the interests of both the parties and should not result detriment to any one of them. It is not as if, setting aside of the order passed under Rule 3 of Order 37, results in any irreparable loss or substantial detriment to the plaintiff. At the most, the defendant would be entitled to put forward his defence and nothing more.

8. This Court granted interim stay on 5-3-2004. The petitioner has come forward to deposit a sum of Rs. 50,000/- to the credit of the three suits to prove his bona fides.

9. Under these circumstances, the orders under revision are set aside. Consequently, the decrees passed by the Trial Court shall stand set aside. The petitioner shall be entitled to deliver his defence within 10 days from today. He shall also deposit the demand draft for Rs. 50,000/- dated 23-4-2004, drawn in favour of the Trial Court, along with written statement. The respondent shall be entitled to withdraw the same. The said amount shall be taken into account while passing the decrees in the suits. The suits, in turn shall be disposed of by the

end of December, 2004. The CRPs. are accordingly allowed.