

N. Sunaja Vs. Katragadda Suresh

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Court : Andhra Pradesh

Decided On : Mar-22-2006

Reported in : 2006(3)ALT406

Judge : C.Y. Somayajulu, J.

Appeal No. : C.R.P. No. 1549 of 2005

Appellant : N. Sunaja

Respondent : Katragadda Suresh

Advocate for Def. : B. Simhachalam, Adv.

Advocate for Pet/Ap. : O. Manohar Reddy, Adv.

Judgement :

ORDER

C.Y. Somayajulu, J.

1.This revision is preferred against the order allowing a petition to set aside the exparte decree dated 6-6-2000 in O.P.No.56 of 2000 on the file of the Family Court, Secunderabad. Respondent filed the aforesaid I.A.No. 439 of 2002 for setting aside the exparte order passed in O.P.No. 56 of 2000 which was allowed by cryptic order reading-

Publication filed. Respondent called absent, set exparte, petition allowed.

2. The contention of the learned Counsel for revision petitioner is that since the revision petitioner is residing in U.S.A., her mother who was present in the trial Court on the date of hearing had in fact filed the counter affidavit sworn to by the revision petitioner, but the trial Court even without considering the counter affidavit and even without affording an opportunity of making a representation to the mother of the revision petitioner, set the revision petitioner exparte, as she was called absent and allowed the petition.

3. It is well known that judicial orders are expected to be speaking orders. It is also well known that merely because the respondent chose to remain exparte there is no presumption that the cause pleaded in the proceeding by the petitioner is true. So, merely because the respondent in a proceeding is set exparte, it does not per se mean that the petitioner is entitled to the relief claimed. So, even in cases where the opposite side i.e. respondent remains ex parte, the Court is under an obligation to verify the facts, and in case it feels that the petitioner is entitled to the relief sought, it has to give reasons for its conclusion as to why it is granting the relief sought to the petitioner.

4. Since the order under revision does not contain reasons for the Court holding that the petitioner before it (i.e. respondent in this C.R.P.) is entitled to the relief sought, it cannot but be termed as a mute order. A mute judicial order is unsustainable, when it comes up for scrutiny by an appellate or revisional Court.

5. Hence, the order under revision is set aside and the case is remitted to the trial Court for fresh disposal according to law, after taking into consideration the counter affidavit filed by the revision petitioner i.e. respondent in I.A.No. 439 of 2002 before it. Since the revision petitioner is said to be in U.S.A., the trial Court shall permit the mother of the revision petitioner to represent the revision petitioner, and if necessary permission for legal assistance also to assist the Court in the disposal of the case may be given. Petition is ordered accordingly. No order as to costs.

