

Order on I.A No.2/2023
filed U/Order 9 Rule 7 of CPC

The Respondent No.2 has filed the above application to set aside the order placing him ex-parte on 11.2.2022 on the ground that no notice was served on the 2nd Respondent and the Petitioner in collusion with the Postman got reported that the notice has been served on the 2nd Respondent. The 2nd Respondent came to know about the ex-parte order only on the spot auction conducted in the Suit Schedule Property by the Petitioner. Later, on enquiry through his Counsel he came to know that the Petitioner has played a game and managed to place him ex-parte and obtained an ex-parte order. Immediately, he applied for copy and came to know that he was placed ex-parte on 11.2.2022. The Respondent No.2 has got a good case on merits and if the order placing him ex-parte is not set aside, he will be put to loss, hardship and injury. Therefore, the 2nd Respondent filed the above application.

2. The Petitioner objected the above application on the ground that no satisfactory reasons assigned by the 2nd Respondent to set aside the order placing

him *ex-parte*. The Court notice was duly served on the 2nd Respondent on 20.1.2022 and inspite of the same the 2nd Respondent did not appear before the Court. In fact at the time of first spot sale which was conducted on 19.9.2022, the 2nd Respondent interfered and agreed to settle the amount to the Petitioner, but did not turned up to the Court. Again at the second spot sale also, which was conducted on 25.10.2023 the 2nd Respondent and other Respondents interfered and raised the auction amount from their side bidder and even the highest bidder did not turned up to the Court to deposit the amount. These are all the tactics of the 2nd Respondent to drag on the proceedings. Therefore, according to Petitioner, no sufficient cause shown by the 2nd Respondent to set aside the order placing him *ex-parte*. Therefore, the Petitioner sought for dismissal of the application.

3. Heard both sides.

4. Now the points that would emerge for the consideration of this Court are as follows:

**1) Whether the Respondent No.2
has made out good cause for his
previous non-appearance to set**

aside the order placing him ex-parte?

2) What order?

5. My findings on the above points are as under:

Point No.1 : In the Negative.

Point No.2 : As per final order for the following :

REASONS

6. **Point No.1:-**

Before appreciating the arguments canvassed by the Learned Counsel for both the parties, it is necessary to refer Order 9 Rule 7 of CPC which reads thus:

Order 9 Rule 7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.— Where the Court has adjourned the hearing of the suit, ex parte, and the defendant, at or before such hearing appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

7. From the above provision, it could be seen that in order to set aside the order placing the Defendant *ex-parte*, he is required to assign good cause for his previous non-appearance. In the instant case the specific contention of the 2nd Respondent is that no notice was served on the 2nd Respondent and the Petitioner in collusion with the postman got reported that the 2nd Respondent was duly served and made this court to place the 2nd Respondent *ex-parte*.

8. In order to appreciate this contention, it is necessary to refer the court records. A postal acknowledgment signed by the 2nd Respondent is available on record. After the institution of the above petition, notice was ordered through court as well as through registered post, acknowledgment due. The acknowledgment is available on record and it is duly signed by the 2nd Respondent on 20.1.2021. However, for obvious reasons the 2nd Respondent is now contending that no notice was served on the 2nd Respondent. In fact the address mentioned on the postal acknowledgment is as follows:

Mr. S. Gopinathan,

S/o Late G. Srinivasa Naidu,
No.6/12, 1st Main Road,
Shastrinagar,
Indiranagar 2nd Stage,
Bangalore-560 038.

9. The 2nd Respondent is not disputing the said address. Even in the affidavit in support of the application, the 2nd Respondent has mentioned the very same address. Therefore, the 2nd Respondent cannot be permitted to contend that he was not served with the notice of this Court. On the other hand, the postal acknowledgment which contains the seal of post office clearly indicate that he was served with the notice of this Court. The Respondent No.2 has not disputed his signature on the acknowledgment.

10. Even otherwise, this Court after placing the 2nd Respondent ex-parte, ordered for auction of the disputed property and the auction was conducted by the Court Bailiff on 19.9.2022 for the first time, and the report of the Bailiff which is available on record reveals that the 2nd Respondent is one of the Panchayathdars at Sl.No.2 on 19.9.2022. Meaning thereby, the 2nd Respondent was aware of the

pendency of the above petition, even as on 19.9.2022. Whereas the above application is filed on 22.11.2023 after more than 14 months. No explanation is offered by the 2nd Respondent for not approaching the Court to file the similar application to set aside the order placing him ex-parte, immediately after 19.9.2022.

11. The order sheet of this Court indicate that after 19.9.2022, the matter was adjourned from time to time till the filing of the above application by the 2nd Respondent. The adjournment dates are as follows, 15.10.2022, 17.11.2022, 14.12.2022, 30.1.2023, 4.3.2023, 30.3.2023, 12.4.2023, 24.5.2023, 20.6.2023, 15.7.2023, 31.8.2023, 14.9.2023, 27.11.2023. All these dates of hearing, no attempt is made by the 2nd Respondent to get the order placing him ex-parte set aside. In fact, it appears from the conduct of the 2nd Respondent, that he was watching the proceedings from outside. Only when the property in dispute was ordered to be auctioned by second time, the 2nd Respondent appeared before the Court and filed the above application by swearing to a false affidavit stating

that he was not served with the court notice. The Respondent No.2 was required to explain the reason for his non-appearance on each date of hearing. The above petition is of the year 2021 and the Respondents are protracting the proceedings on one pretext or the other. Therefore, on looking to the conduct of the 2nd Respondent, the allegations made by the Petitioner in the objection to the above application appears to be true. The Petitioner has categorically stated that the 2nd Respondent has been raising the auction amount of the property from the persons of his choice in order to deprie the fruits of the decree to the Petitioner and thereafter the highest bidders are remaining absent before the Court and not depositing the bid amount before the Court. Therefore, the said contention of the Petitioner is fortified by the conduct of the 2nd Respondent. In fact, the 2nd Respondent has taken the court on ride knowing fully well that he was served with the notice of this Court, filed the above application by swearing to a false affidavit stating that he was not served with the court notice. The 2nd Respondent requires to be prosecuted for having sworn to a false affidavit

before this Court. Therefore, no just cause or sufficient cause is shown by the 2nd Respondent to set aside the order placing him ex-parte. Under the circumstances, **Point No.1 is answered in the Negative.**

12. Point No.2:

In view of the findings on the above point, the application filed by the Respondent No.2 deserves to be dismissed with cost. Accordingly, I proceed to pass the following:

ORDER

I.A No.5/2023 filed U/Order 9 Rule 7 of CPC by the 2nd Respondent is hereby dismissed with cost of Rs.5,000/-.

Re-issue sale proclamation in respect of petition schedule property. The spot sale shall be on 7.3.2024 and court sale on 8.4.2024.

Re-issue sale proclamation if PF is paid.

Call on 7.3.2024.

[P.G Chaluva Murthy]
LXXII Addl.City Civil & Sessions
Judge, Bengaluru. (CCH-73)