

Savithri Amma Seethamma

Vs

Aratha Karthy and Others

Civil Appeal No. 195 of 1983

(P.N. Bhagwati, E.S. Venkataramiah JJ)

07.01.1983

ORDER

1. It appears that on March 30, 1982 when Civil Revision Petition No. 766 of 1981 preferred by the 1st respondent came to be heard by the Learned Single Judge of the High Court, the advocate engaged on behalf of the appellant could not appear because he was engaged in another court and it was only later, after the court had closed for the summer vacation on April 7, 1982, that he came to know that the revision application had already been heard and decided in favour of the 1st respondent. The learned Advocate for the appellant, on coming to know what had happened, made an application supported by his own affidavit for rehearing of the revision application. This application was rejected by the learned Single Judge of the High Court treating it as if it were a review application. The Order rejecting the application for rehearing was made on June 22, 1982. The appellant thereupon preferred the present appeal with special leave obtained from this court.

2. Now it is obvious that the appellant could not appear at the hearing of the revision application referred by the 1st respondent because the advocated engaged by him was occupied in another court and this fact was stated by the learned Advocate in the affidavit made by him in support of the application for rehearing. We are, therefore of the view that on the facts and circumstance of the present case, the appellant had sufficient cause for not being present at the revision application and the learned Single Judge of the High Court, ought, in the circumstances, to have allowed the application and reheard the civil revision petition applying the principle underlying Order 41, Rule 21 of the Code of Civil Procedure. We accordingly allow the appeal, set aside the orders dated March 30, 1982 and June 22, 1982 passed by the learned Single Judge of the High Court and remit the C. R. P. No. 766 of 1981 to the High Court for disposal of merits in accordance with law. It will be for the Chief Justice of the High Court to consider whether the civil revision before the same learned Judge or before any other learned Judge of the High Court. The appellant has already deposited a sum of Rs. 500/- which the 1st respondent will be at liberty to withdraw and in addition to this amount of Rs. 500 towards the costs of the present appeal. This additional amount of Rs. 500/- will be deposited in the High Court by the appellant in C. R. P. No. 766 of 1981 within four weeks from today and the 1st respondent will be at liberty to withdraw the same.

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