

Savithri Amma Seethamma vs Aratha Karthy And Ors. on 7 January, 1983

Equivalent citations: AIR1983SC318, 1983(0)KLT379(SC), 1983(1)SCALE706, (1983)1SCC401, AIR 1983 SUPREME COURT 318, 1983 UJ(SC) 154, (1983) 1 APLJ 37.1, (1983) 9 ALL LR 233, 1983 (1) SCC 401, (1983) KER LT 379, 1983 BBCJ 96, 1983 ALL CJ 408

Bench: E.S. Venkataramiah, P.N. Bhagwati

ORDER

1. It appears that on 30th March 1982 when C.R.P. No. 766 of 1981 preferred by the first 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 7th April 1982, that he came to know that the revision application had already been heard and decided in favour of the first respondent. The learned advocate for the appellant, on coming to know what had happened, made an application supported by his own affidavit for re-hearing 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 re-hearing was made on 22nd June 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 preferred by the first respondent because the Advocate 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 circumstances of the present case, the appellant had sufficient cause for not being present at the hearing of the revision application and the learned Single Judge of the High Court ought, in the circumstances, to have allowed the application and re-heard the civil revision petition applying the principle underlying Order XLI, Rule 21 of the CPC. We accordingly allow the appeal, set aside the orders dated 30th March 1982 and 22nd June, 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 on merits in accordance with law. It will be for the Chief Justice of the High Court to consider whether the civil revision petition should be posted 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 first respondent will be at liberty to withdraw and in addition to this amount of Rs. 500/- the appellant will pay to the first respondent a further sum 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 first respondent will be at liberty to withdraw the same.