

*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**

+ CIVIL REVISION PETITION NO: 2460/2025

%19.09.2025

Pilla Venkateswara Rao Alias Allabakshu

.....Petitioner

And:

\$ Kancherla Malyadri

....Respondent

!Counsel for the petitioner : Sri A.Ravindra Babu

^Counsel for the respondent :

<Gist:

>Head Note:

? Cases referred:

1. (2016) 16 SCC 615
2. 2023 LiveLaw (SC) 1032
3. 2025 SCC OnLine AP 3059

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

* * * *

CIVIL REVISION PETITION NO: 2460/2025

DATE OF JUDGMENT PRONOUNCED: **19.09.2025**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

- | | |
|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment? | Yes/No |

RAVI NATH TILHARI,J

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION NO: 2460/2025

ORDER:

On the request made citing urgency by the learned counsel for the petitioner, lunch motion was granted.

2. The matter is taken up as lunch motion, listed in Lunch motion list.
3. Heard Sri A. Ravindra Babu, learned counsel for the petitioner.
4. The petitioner is the Judgment Debtor (in short 'J.Dr.') in O.S.No.623 of 2002 on the file of the Principal Senior Civil Judge, Vijayawada. The suit was filed by the respondent (plaintiff/decreed holder), which was decreed vide judgment & decree dated 08.12.2006 which is in the following terms:

“1) that the suit be and the same is hereby decreed directing the defendant to vacate and deliver vacant possession of the 2nd floor premises of the plaintiff schedule building to the plaintiff on or before 8th February, 2007, failing which the plaintiff is at liberty to recover the same through process of Law, and

2) that the defendant do also pay a sum of Rs.8,128/- to the plaintiff towards institutional costs of this suit and do bear his own costs of Rs.Nil.”

5. Challenging, the decree dated 08.12.2006, A.S.No.33 of 2007 was filed, which was dismissed for non-prosecution on 20.03.2023.
6. The decree holder filed E.P.No.73 of 2025, in which the learned Execution Court has issued notice dated 02.09.2025 to the petitioner to appear and file objections, if any, fixing 06.10.2025. The same reads as under:-

"NOTICE

**IN THE COURT OF THE HON'BLE PRINCIPAL CIVIL JUDGE
(SENIOR DIVISION) AT VIJAYAWADA
E.P.NO.73/2025 in O.S.No.623/2002**

Between:-

Kancherla Malyadri

..... D.Hr./Plaintiff.

And

Pilla Venkateswara Rao
alias Allabakshu

.....J.Dr./Defendant

To:J.Dr./Defendant:

Pilla Venkateswara Rao alias Allabakshu,
S/o.Ramulu,
R/o.door no.25-2-10,
Vakamudivari Street,
Seetannapeta,
Gandhi Nagar,
Vijayawada – 52003

Has/Have filed petition in the above matter. If you have got any objection you may appear before this Court at 10.30 A.M. on 06.10.2025 either in person or through an advocate and file your objection. If you fail to do so, the matter will be decided ex-parte.

Given under my hand and the Seal the Court this 02 day of September, 2025.

Advocate for the D.Hr.

(By order of the Court)
Judge/Superintendent"

7. The present Civil Revision Petition under Section 115 of the Code of Civil Procedure (CPC) has been filed to set aside the aforesaid notice dated 02.09.2025.

8. Learned counsel for the petitioner submits that in A.S.No.33 of 2007 the petitioner has filed I.A.No.3 of 2025 for setting aside the order of dismissal which is pending. The appeal was dismissed in default and this Court did not decide the appeal on merits. So, the Trial Court's decree did not become final.

It cannot be executed. He submits that any provision of law under which notice has been issued has also not been mentioned.

9. I have considered the above submissions and perused the material on record.

10. The aforesaid submissions deserve rejection being misconceived and having no substance for the following reasons:..

10.1 In the absence of the appellant's counsel an appeal under Section 96 CPC cannot be decided on merits. It has to be dismissed for want of prosecution, in view of Order 41 Rule 17 CPC Explanation which reads as under:-

“17. Dismissal of appeal for appellant's default: (1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

Explanation- Nothing in this sub-rule shall be construed as empowering the Court to dismiss the appeal on the merits.”

a) In **Ashwathamma v. Lakshamma**¹ the Hon'ble Apex Court held as under:

“3. In support of the said submission, he has commended us to the decision in **Ghanshyam Dass Gupta v. Makhan Lal [(2012) 8 SCC 745]**. In the said decision, it has been held as follows :

"7. Rule 17(1) of Order 41 deals with the dismissal of appeal for appellant's default. The above mentioned provision, even without explanation, if literally read, would clearly indicate that if the appellant does not appear when the appeal is called for hearing, the court has to dismiss the appeal. The provision does not postulate a situation where, the appeal has to be decided on merits, because possibility of allowing of the appeal is also there, if the appellant has a good case on merits; even if no body had appeared for the appellant.

8. Prior to 1976, conflicting views were expressed by different High Courts in the country as to the purport and meaning of sub-rule (1) of

¹ (2016) 16 SCC 615

Rule 17 Order 41 CPC. Some High Courts had taken the view that it was open to the appellate court to consider the appeal on merits, even though there was no appearance on behalf of the appellant at the time of hearing. Some High Courts had taken the view that the High Court cannot decide the matter on merits, but could only dismiss the appeal for appellant's default. Conflicting views raised by the various High Courts gave rise to more litigation. The Legislature, therefore, in its wisdom, felt that it should clarify the position beyond doubt. Consequently, Explanation to sub-rule (1) of Rule 17 Order 41 CPC was added by Act 104 of 1976, making it explicit that nothing in sub-rule (1) of Rule 17 Order 41 CPC should be construed as empowering the appellate court to dismiss the appeal on merits where the appellant remained absent or left un-represented on the day fixed for hearing the appeal. The reason for introduction of such an explanation is due to the fact that it gives an opportunity to the appellant to convince the appellate court that there was sufficient cause for non-appearance. Such an opportunity is lost, if the courts decide the appeal on merits in absence of the counsel for the appellant.

9. We may, in this connection, refer to a judgment of this Court in ***Abdur Rahman and Others v. Athifa Begum and Others (1996) 6 SCC 62***, where in the scope of explanation to Rule 17(1) of Order 41 CPC came up for consideration. While interpreting the said provision, this Court took the view that the High Court could not go into the merits of the case if there was no appearance on behalf of the appellant. We also endorse that view.”

b) In ***Benny D’Souza v. Melwin D’Souza***² also the Hon’ble Apex Court held as under:

Having heard learned senior counsel for the appellants and learned counsel for the respondents, at the outset, we extract Order XLI Rule 17 of the CPC which reads as under:

“17. Dismissal of appeal for appellant’s default: (1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

Explanation- Nothing in this sub-rule shall be construed as empowering the Court to dismiss the appeal on the merits.”

The Explanation categorically states that if the appellant doesnot appear when the appeal is called for hearing it can only be dismissed for non-prosecution and not on merits.

However, the impugned judgment is a dismissal of the appeal on merits which is contrary to the aforesaid provisions and particularly the Explanation thereto. On that short ground alone the appeal is allowed the impugned order is set aside.”

² 2023 LiveLaw (SC) 1032

10.2 The dismissal of appeal even in default confirms the Trial Court's decree.

10.3 Mere pendency of the appeal does not operate as stay on execution of the Trial Court's decree, though here no appeal is pending.

10.4 The Execution Court has the power and jurisdiction to execute the decree. Non-mention of any legal provision in the impugned notice does not vitiate the notice nor takes away the jurisdiction of the Execution Court.

11. Learned counsel for the petitioner could not address as to how the impugned notice is a 'case decided' under Section 115 CPC for its maintainability.

11.1. This Court is of the considered view that the Civil Revision Petition under Section 115 of CPC against the impugned notice asking the petitioner to appear in the execution case and to file the objections, if any, fixing a date and time is not maintainable. It is not a case decided by any Court subordinate to the High Court. There is also no jurisdictional error in issuing notice.

11.2. The petitioner instead of approaching this Court should have approached the Execution Court pursuant to the notice and must have been duly advised by his counsel.

12. We would also place on record that the learned counsel for the petitioner got the matter listed as 'lunch motion' by making misrepresentation to the Court. The urgency cited was 'notice given for delivery of possession'.

12.1. In the Court Slip also it was so mentioned, which reads as under:-

“The J.Dr./defendant who is **petitioner** in the above CRP **is issued a notice for delivery of possession**, in violation of legal procedure and though the decree has not become final and restore petition is pending in appeal.”

12.2. The impugned notice is for appearance and filing objections in execution case and not for delivery of possession at this stage.

13. Recently in ***A.S.Traders, represented by its Proprietor A.Safar Ali v. M.G.R.Rice Industries, Polamuru***³, after referring to *J.S.Jadav v. Mustafa Haji Mohamed Yusuf*, this Court observed as under:

13. In *J.S.Jadhav v. Mustafa Haji Mohamed Yusuf*, {(1993) 2 SCC 562} the Hon’ble Apex Court observed and held that advocacy is not a craft but a calling; a profession wherein devotion to duty constitutes the hallmark. Sincerity of performance and earnestness of endeavour are the two wings that will bear aloft the advocate to the tower of success. Given these virtues other qualifications will follow of their own account. This is the reason why legal profession is regarded to be a noble one. But it cannot be allowed to become a sorriest of trades. It will be useful to quote what Sharaswood said of this profession. It is apt to refer para (8) of *J.S.Jadhav*(supra), in which the Hon’ble Apex Court quotes what Sharaswood said of this profession:

“8. Advocacy is not a craft but a calling; a profession wherein devotion to duty constitutes the hallmark. Sincerity of performance and earnestness of endeavour are the two wings that will bear aloft the advocate to the tower of success. Given these virtues other qualifications will follow of their own account. This is the reason why legal profession is regarded to be a noble one. But it cannot be allowed to become a sorriest of trades. It will be useful to quote what Sharaswood said of this profession:

“A lawyer, without the most sterling integrity, may shine for a while with meteoric splendour; but his light will soon go out in blackness of darkness. It is not in every man's power to rise to eminence by distinguished abilities.

It is not in every man's power, with few exceptions, to attain respectability, competence, and usefulness. The temptations, which beset a young man in the outset of his professional life, especially if he is in absolute dependence upon

³ 2025 SCC OnLine AP 3059

business for his subsistence, are very great. The strictest principles of integrity and honor are his only safety. Let him begin by swerving from truth or fairness, in small particulars, he will find his character gone — whispered away, before he knows it. Such a one may not indeed be irrecoverably lost; but it will be years before he will be able to regain a firm foothold. There is no profession in which moral character is so soon fixed as in that of the law; there is none in which it is subjected to severer scrutiny by the public. It is well that it is so. The things we hold dearest on earth, our fortunes, reputations, domestic peace, the future of those dearest to us, nay, our liberty and life itself, we confide to the integrity of our legal counsellors and advocates. Their character must be not only without a stain, but without suspicion. From the very commencement of a lawyer's career, let him cultivate above all things, truth, simplicity and candor. They are cardinal virtues of a lawyer. Let him always seek to have a clear understanding of his object : be sure it is honest and right and then march directly to it. The covert, indirect and insidious way of doing anything, is always the wrong way. It gradually hardens the moral faculties, renders obtuse the perception of right and wrong in human actions, weighs everything in the balance of worldly policy, and ends most generally, in the practical adoption of the vile maxim, 'that the end sanctifies the means'."

Therefore an exacting standard is what is expected of an advocate."

14. In a different context i.e. professional misconduct, which we are not observing in the present case, the Hon'ble Apex Court in *J.S.Jadhav*(supra) referred to the judgment in *M.Veerabhadra Rao v. Tek Chand*,{1984 Supp SCC 571} in which *inter alia*, it was held that the central function that the legal profession must perform is nothing less than the administration of justice. We reproduce para(9) of *J.S.Jadhav*(supra) as under:

"9. This Court has taken the view in *M. Veerabhadra Rao v. Tek Chand* as to how much in such a case professional misconduct has to be dealt with. In that case, the advocate committed forgery by attesting false affidavits which was considered to be a serious misconduct. This Court pointed out the duties of the members of the bar in the following passage : (SCC pp. 587-88, para 30)

"Legal profession is monopolistic in character and this monopoly itself inheres certain high traditions which its members are expected to upkeep and uphold. Members of the profession claimed that they are the leaders of thought and society. In the words of Justice Krishna Iyer in *Bar Council of Maharashtra v. M.V. Dabholkar*² the role of the members of the Bar can be appreciated. He said:

"The Bar is not a private guild, like that of "barbers, butchers and candlestick-makers" but by bold contrast, a public institution committed to public justice and pro bono publico service. The grant of a monopoly licence to practice law is based on three assumptions : (1) There is a socially useful function for the lawyer to perform, (2) the lawyer is a professional person who will perform that function, and (3) his performance as a professional person is regulated by himself and more formally, by the profession as a whole. The central function that the legal profession must perform is nothing less than the administration of justice ('The Practice of Law is a Public Utility' — 'The Lawyer, the Public and Professional Responsibility' by F. Raymond Marks et al — Chicago American Bar Foundation, 1972 pp. 288- 289). A glance at the

functions of the Bar Council, and it will be apparent that a rainbow of public utility duties, including legal aid to the poor, is cast on these bodies in the national hope that the members of this monopoly will serve society and keep to canons of ethics befitting an honourable order. If pathological cases of member misbehaviour occur, the reputation and credibility of the Bar suffer a mayhem and who, but the Bar Council, is more concerned with and sensitive to this potential disrepute the few black sheep bring about? The official heads of the Bar, i.e. the Attorney-General and the Advocates-General too are distressed if a lawyer “stoops to conquer” by resort to soliciting, touting and other corrupt practices.'

If these are the high exceptions of what is described as a noble profession, its members must set an example of conduct worthy of emulation. If any of them falls from that high expectation, the punishment has to be commensurate with the degree and gravity of the misconduct.”

15. In *K.Anjinappa v. K.C.Krishna Reddy and another*, {(2022) 17 SCC 625} at para No.29, it was held as under:

“29. In *O.P. Sharma v. High Court of Punjab & Haryana*, {(2011) 6 SCC 86} this Court has observed as under:

“39. An advocate should be dignified in his dealings to the court, to his fellow lawyers and to the litigants. He should have integrity in abundance and should never do anything that erodes his credibility. An advocate has a duty to enlighten and encourage the juniors in the profession. An ideal advocate should believe that the legal profession has an element of service also and associates with legal service activities. Most importantly, he should faithfully abide by the standards of professional conduct and etiquette prescribed by the Bar Council of India in Chapter II, Part VI of the Bar Council of India Rules.”

14. Filing such petitions amounts to abuse and misuse of the process of this Court. Citing urgency for lunch motion on a non-existent ground by misstatement deserves imposition of costs.

15. The Civil Revision Petition is dismissed, imposing the costs of Rs.25,000/- to be paid by the counsel for the petitioner, to Andhra Pradesh High Court Legal Services Committee at Andhra Pradesh High Court, within three (03) weeks, failing which Registrar (Judicial) shall take necessary steps to realise the same as per law.

16. The Registrar (Judicial) shall place on record the report of compliance.

17. List on 06.10.2025, only for perusal of compliance report.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI, J

Dated: 19.09.2025

Note: LR copy be marked

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THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

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