

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CRP Nos.3173 and 3919 of 2015

COMMON ORDER:

These two Civil Revision Petitions are being disposed of by this common order as they arise out of the same Order in I.A.No.1131 of 2014 in O.S.No.185 of 2013.

02. For narration of the parties, the parties as arrayed in C.R.P.No.3173 of 2015 are taken into consideration.

03. C.R.P.No.3173 of 2015 was filed by the defendant in the suit, whereas the C.R.P.No.3919 of 2015 was filed by the plaintiff in the suit. The said suit was filed by the plaintiff in the Court of VII Additional District Judge, Ongole, seeking damage for malicious prosecution by the defendant. The defendant was working as Agricultural Officer at the relevant point of time and in discharge of her duties, she seized certain commodities and ultimately that seizure was held to be illegal. Be that as it may, she was set *ex parte* on 24.10.2013 and an *ex parte* decree was passed on 16.12.2013. For setting aside the said *ex parte* decree, she filed I.A.No.1131 of 2014 stating as follows:

“ In fact, I submit that the plaintiff filed the suit against me for damages on 22.07.2013. The Hon'ble Court issued suit summons to me and the matter posted to 23.08.2013 for first hearing. I further submit that as per the Hon'ble Court records, the summon was affixed to the door of the house on 14.08.2013, in which I lived. But by that time I have already vacated the house and I have shifted to Hyderabad. But the Hon'ble Court on first hearing date i.e., 23.08.2013, transferred the suit to the Hon'ble VII Additional District Court and posted to 24.10.2013. I further submit that on 24.10.2013 the Hon'ble Court recorded

that summons of defendant through Court served, service is sufficient and I was *ex parte* and posted the suit for 7.11.2013 for plaintiff's evidence and the Hon'ble Court examined plaintiff and passed *ex parte* orders on 16.12.2013 allowing an *ex parte* decree of the suit claim against me.

I further submit that basing on the *ex parte* judgment and decree dt. 16.12.2013, the Plaintiff/DHR filed the EP No.20 of 2014 against me and I came to know about the suit only after receiving summons in E.P. “

04. The plaintiff filed Counter Affidavit stating with the averment that defendant vacated the house by the time the suit summons were affixed to the door of the house on 14.08.2013 was false. The Proceedings of the Commissioner of Agriculture dt. 22.02.2014 indicates that she was on leave from 19.04.2013 to 31.10.2013 and it does not mean that she vacated the house during the relevant period. He also disputed the other averments made in the affidavit filed in support of her application. The lower Court without assigning any reason, allowed the said application by observing as follows:

“Heard the both counsel. Perused the Record.
Petition is allowed on payment of ½ of the suit costs payable on or before 10.08.2015”

05. The defendant in the suit is aggrieved by the imposition of half of the suit costs and filed C.R.P.No.3173 of 2015, whereas the plaintiff is aggrieved with regard to allowing of the application without assigning any reason and filed C.R.P.No.3919 of 2015.

06. Learned counsel for petitioner in C.R.P.No.3173 of 2015 submits that there is no need for filing a separate application seeking condonation of delay in filing application to set aside the *ex parte decree*, if such application is filed within 30 days of the knowledge of passing *ex parte* decree. The Lower Court should not have imposed payment of half of the suit costs while allowing the application seeking

setting aside the *ex parte* decree.

07. Learned counsel for petitioner in C.R.P.No.3919 of 2015 submits that the order of the Lower Court is bereft of any reasons and when a detailed affidavit and counter affidavit are filed before the Court, the Court should have recorded reasons if it wanted to allow I.A.No.1131 of 2014. He also submits that an application in I.A.No.336 of 2014 was filed seeking condonation of delay in filing the application in I.A.No.1131 of 2014 and the Order in I.A.No.1131 of 2014 was passed without disposing of the said application. But the learned counsel for petitioner/defendant submits that no application is necessary but it was filed by way of abundant caution.

08. A perusal of the impugned Order shows that no reasons were assigned for allowing the application. In order to decide whether any application for condoning the delay is necessary or not, the relevant fact is with regard to the knowledge of the *ex parte* decree to the defendant. In para No.7 of the affidavit filed in support of the application, she stated that she came to know about the same only after receiving the summons in E.P.No.20 of 2014 but the date of receipt of such summons were not indicated.

09. In the circumstances, the impugned Order dt. 16.07.2015 is set aside and the matter is remanded to the Lower Court for passing appropriate reasoned Order after hearing both the counsel, in accordance with law, within a period of one month from the date of receipt of a copy of this Order.

10. Accordingly, both the C.R.Ps are allowed. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any pending in these Civil Revision Petitions, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 30.12.2015

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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