

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

—
CIVIL REVISION PETITION No.1030 of 2015

ORDER:

Heard the learned counsel for petitioner and the learned counsel for respondent.

2. The present Civil Revision Petition is filed challenging the order in I.A.No.1166 of 2014 dated 02.12.2014 on the file of the Court of the Senior Civil Judge at Tadepalligudem (for short, trial Court) allowing the application of the respondent for payment of costs without affording an opportunity to the petitioner.

3. The petitioner herein is plaintiff and the respondent herein is defendant in O.S.No.5 of 2012, which was filed seeking recovery of money from the respondent on the basis of a promissory note. For the sake of convenience, the parties shall be referred to as they are arrayed in the trial Court.

4. An ex parte decree was passed by the trial Court on 22.01.2013. Later, the plaintiff filed E.P.No.32 of 2013 for execution of the decree. At that stage, the defendant filed I.A.No.336 of 2013 for setting aside the ex parte decree. The said application was allowed on 11.07.2014 on payment of costs of Rs.1,000/- with a default clause. Since the costs were not paid, the petition was dismissed on 11.08.2014. The respondent filed I.A.No.1166 of 2014 to restore I.A.No.336 of 2013 and the same was allowed without issuing any notice to the plaintiff on 09.12.2014, but the order states that it was on 02.12.2014, whereas in the docket, it was mentioned as 09.12.2014. Challenging the said order, the present Civil Revision Petition is filed.

5. It is clear from the docket proceedings that no opportunity was given to the plaintiff. The learned counsel for the plaintiff submits that there are two suits bearing O.S.Nos.4 of 2012 and 5 of 2012 and both the

suits were decreed ex parte. The defendant filed I.A.Nos.335 of 2013 and 336 of 2013 respectively in the said suits, and on the same day, an order was passed in I.A.No.335 of 2013 dismissing the same, whereas an order was passed in I.A.No.336 of 2013 allowing the same on payment of costs of Rs.1,000/-. Had the plaintiff been given an opportunity in I.A.No.1166 of 2014, he would have brought to the notice of the trial Court with regard to the disposal of I.A.No.335 of 2013.

6. Learned counsel for the defendant, on the other hand, submits that against the order in I.A.No.335 of 2013, the defendant filed MACMA.SR.No.38777 of 2014 with a condone delay petition in MACMA.MP.No.1898 of 2014 before this Court. When the said application was dismissed on 22.12.2014, the matter was carried to the Supreme Court in Special Leave Petition (Civil) No.11453 of 2015 and the Supreme Court issued notice thereon, while ordering maintenance of *status quo*.

7. In view of lack of opportunity to the plaintiff, the impugned order passed by the trial Court in I.A.No.1166 of 2014 dated 09.12.2014, is set aside and the matter is remanded to the trial Court for passing appropriate orders in accordance with law, after hearing both the parties, within a period of 15 days from the date of receipt of a copy of this order.

8. The Civil Revision Petition is, accordingly, allowed. No order as to costs. Miscellaneous Petitions, if any pending, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 19.11.2015

Note: Issue CC by 23.11.2015.

B/o. TJMR