

THE HON'BLE SRI JUSTICE K.C.BHANU
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CIVIL REVISION PETITION No.938 OF 2015

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908 (for short, 'CPC') is filed against the order and decree, dated 20.02.2015, in Interlocutory Application No.1241 of 2013 in Original Suit No.285 of 2011 on the file of the II Additional District Judge, Guntur.

2. The aforesaid Interlocutory Application was filed under Order IX Rule 13 CPC to set aside the *ex parte* decree, dated 28.06.2013 and the same was allowed on deposit of suit costs. Challenging the impugned order insofar as it relates to deposit of suit costs, the present Civil Revision Petition is filed.

3. Learned counsel for the petitioner contended that having accepted sufficient cause for not attending the Court on that particular day, the Court below ought not have directed the petitioner to deposit the suit costs which includes Rs.35,000/- towards advocate fee and hence, he prays to reduce the costs.

4. The petitioner, who is defendant in the suit, was set *ex parte* in the suit on the ground that he could not attend the Court when the suit was posted for cross-examination of P.W.1. As the petitioner fell sick, he could not attend the Court.

5. Under Order IX Rule 13 CPC, the Court has power to set aside the *ex parte* decree, provided the default party has to explain sufficient reason for not attending the Court on the day so fixed, and imposing costs is unreasonable. This Court is unable to accept the said contention because under Order IX Rule 13 CPC, the Court has ample power to set aside the decree on such terms and conditions as

it deem fit and proper. The condition in the impugned order is to deposit the suit costs, but not any amount. Therefore, the Court below rightly exercised its discretion in directing the petitioner to deposit the suit costs and that direction needs no interference by this Court.

6. Accordingly, the Civil Revision Petition is dismissed. However, two (2) weeks' time from the date of receipt of a copy of this order is granted for payment of suit costs. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

JUSTICE K.C.BHANU

MARCH 13, 2015

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DATE: 13.03.2015

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