

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.3656 OF 2004

Dated 25th March, 2015

Between:

S.Khader Basha.

...Appellant.

And:

Indla Subbarayudu.

...Respondents.

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CIVIL MISCELLANEOUS APPEAL No.3656 OF 2004

JUDGMENT:

This appeal is preferred against orders dated 14th July, 2004 in I.A.No.449 of 2003 in O.S.No.35 of 2000 on the file of Senior Civil Judge, Rajampet.

Appellant herein is defendant in the above referred O.S.No.35 of 2000 and he filed I.A.No.449 of 2003 to set aside exparte decree dated 25-6-2003 and the trial court dismissed the application holding that there are no grounds to set aside exparte decree passed against the appellant herein and aggrieved by the order of the Senior Civil Judge, present appeal is preferred.

Heard arguments.

Advocate for appellant submitted that the court below has given an opportunity to the appellant to adduce his evidence and ought to have decided the suit on merits.

He further submitted that respondent herein filed above suit alleging that appellant herein borrowed Rs.3,50,000/- for which defendant filed written statement. He submitted trial is commenced and plaintiff was examined as P.W.1 and he was also cross-examined and when the matter was at the stage of defendant's evidence, appellant herein could not attend the court due to ill health

and the trial court refused to grant further adjournment and set him exparte and passed exparte decree and when an application is filed, the same is dismissed without considering the reason which is sufficient and explaining absence of appellant on 19-6-2003. He submitted that an opportunity may be given to the defendant to adduce his evidence and contest the suit.

Advocate for respondent supported the order impugned. Now the point that would arise for my consideration in this revision is whether the order impugned is proper, legal and correct?

POINT:

I have perused the material papers including the impugned order dated 14-7-2004.

As seen from the material, the defendant was set exparte earlier on one occasion on 25-4-2001 and on a petition filed by him, the said order was set side and opportunity was given to him to contest the suit. He remained exparte on the earlier occasion when the matter was at the stage of cross-examination of P.W.1. After giving opportunity, he cross-examined P.W.1, and thereafter, when the matter was posted for defendant's side evidence, he failed to appear before court on 19-6-2003. No Medical Certificate is filed along with the affidavit to prove that he was suffering with same ailment or any ill-health and considering the same, the trial court dismissed the application holding that he is not interested in prosecuting the case.

On a scrutiny of material, it appears that the appellant is habituated in remaining exparte and filing application whenever he was set exparte and requesting the court to give an opportunity. If really, appellant is interested in defending case having suffered an exparte order earlier, he should have been diligent in prosecuting the case without giving any scope to court to pass any exparte order. But, as seen from the material, the appellant has not evinced any interest in proceeding with the case and failed to show sufficient cause for his absence, therefore, trial court was right in dismissing the application.

For these reasons, I do not find any irregularity or illegality in the order of the learned trial judge and that the appeal is devoid of merits.

For these reasons, this Civil Miscellaneous Appeal is dismissed. No costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI KUMAR

Dated 25th March, 2015.

Dvs

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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Dvs