

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.1546 of 2014

ORDER:

Heard Sri Chakkilam Venkateswarlu, learned counsel for the petitioner and Sri I.Koti Reddy, learned counsel for respondents.

2. This Revision Petition is filed under Article 227 of the Constitution of India challenging the Order dt.07-04-2014 in I.A.No.332 of 2013 in O.S.No.398 of 2012 of the Additional Senior Civil Judge, Ongole alleging it and setting aside the *ex parte* decree dt.16-04-2013 passed against the respondents herein in the above suit.

3. It appears that the respondents received summons in the suit but they were initially set *ex parte* in it on 18-02-2013 and subsequently *ex parte* decree was passed on 16-04-2013.

4. On 12-04-2013, I.A. was filed by the respondents to set aside the Order dt.08-04-2013 setting them *ex parte* in the suit and a copy thereof was also served on the learned counsel for the petitioner who sought time to file a counter affidavit. The said application was filed under Order 9 Rule 7 CPC.

5. In the meantime, *ex parte* decree came to

be passed on 16-04-2013. Instead of filing a fresh application under Order 9 Rule 13 CPC to set aside the *ex parte* decree, the application dt.12-04-2013 filed to set aside the order dt.08-04-2013 was corrected by the respondents. They corrected the words and letters “Order 9 Rule 7 CPC”, as “Order 9 Rule 13 CPC”, the date 08-04-2013 as 16-04-2013 and the word “order” in the prayer part was struck off and the word ‘decree’ was written above it.

6. After these corrections were made, no notice of this I.A. was given to the petitioner or his counsel.

7. This application was numbered in I.A.No.322 of 2013 and the impugned order was passed on 07-04-2014 setting aside the *ex parte* decree stating that the petitioner was absent and there was no representation in the matter.

8. Challenging the same, this Civil Revision Petition is filed.

9. Learned counsel for the petitioner contended that no notice in the application under Order 9 Rule 13 CPC has been given to the petitioner at all and the application filed under Order 9 Rule 7 CPC has been corrected as one under Order 9 Rule 13 CPC. He pointed out that the date of this application is mentioned in the

petition as 12-04-2013 by which date, the respondents had only been set *ex parte* (on 18-02-2013) and there is no *ex parte* decree by them and the *ex parte* decree came to be passed later on 16-04-2013. He pointed out that by 12-04-2013, when this I.A. was filed, there was no *ex parte* decree dt.16-04-2013. I find considerable force in the submission of counsel for petitioner.

10. Learned counsel for the respondents also did not dispute this.

11. Since admittedly no notice of the application under Order 9 Rule 13 CPC had been served on the petitioner by respondents, and since the petitioner had no notice of the same, the Order dt.07-04-2014 in I.A.No.332 of 2013 in O.S.No.398 of 2012 of the Additional Senior Civil Judge, Ongole is set aside, the Civil Revision Petition is allowed; and the said I.A. is remanded back to the said Court to decide afresh in accordance with law after giving opportunity to the petitioner to contest the same by filing a counter. No costs.

12. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-07-2015

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