

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CIVIL REVISION PETITION No.2363 OF 2015

Between:

Madasu Venkata Prasada Rao

.. Petitioner

and

Madasu Asha Latha

.. Respondent

DATE OF JUDGMENT PRONOUNCEMENT : 11th AUGUST,
2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

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| 1. | Whether Reporters of Local newspapers may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. | Whether Their Lordship wishes to see the fair copy of the judgment? | Yes/No |

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.2363 OF 2015

ORDER

This civil revision petition under Article 227 of the Constitution arises out of the order dated 11.02.2015 passed by the learned III Additional District Judge, Bhimavaram, in I.A.No.626 of 2014 in O.S.No.367 of 2012. The said I.A. was filed by the petitioner herein, being the defendant in the suit, under Order 9 Rule 13 CPC to set aside the *ex parte* decree dated 10.06.2014 passed in the suit. By the order under revision, the trial Court allowed the I.A. subject to deposit of half the suit amount. Aggrieved by the condition imposed, the defendant in the suit is before this Court.

The suit, O.S.No.367 of 2012, was filed for recovery of a sum of Rs.9,94,776/- with subsequent interest on the principal amount of Rs.7,30,000/- at the rate of 24% per annum from the date of the suit till the date of realization and for costs. The suit was decreed *ex parte* on 10.06.2014 and the defendant in the suit, the petitioner herein, filed the subject I.A. on 04.07.2014 stating that due to non-availability of leave and as he was suffering from ill health, he could not meet his counsel and give necessary instructions. He therefore prayed for setting aside the *ex parte* decree and to give him an opportunity to contest the suit by filing his written statement.

As the petitioner/defendant failed to file any medical proof in support of his alleged ill health and also did not adduce evidence to show as to when he applied for leave and when it was sanctioned, the trial Court opined that the subject I.A. had only been filed to drag on the

proceedings. Holding so, the trial Court opined that if the petitioner/defendant had any good ground to contest the suit, he would have to deposit half the suit amount. Subject to the said condition, the I.A. was allowed. It appears that on 25.03.2015, taking note of the fact that the amount had not been deposited, the I.A. was dismissed. This civil revision petition was filed before this Court on 09.06.2015.

Heard Sri P.V.V. Satyanarayana, learned counsel for the petitioner/defendant, and Sri Kowturu Vinaya Kumar, learned counsel for the respondent/plaintiff.

It is a settled position of law that while exercising the discretionary jurisdiction vested in it under Order 9 Rule 13 CPC, the trial Court would be entitled to impose conditions subject to which the decree passed against the defendant(s) may be set aside. Ordinarily, a money decree once passed would not be stayed unconditionally while restoring the case. The Court may impose conditions to deposit costs or the decretal amount or some portion thereof or to ask the defendant to give security but such conditions should be reasonable and not harshly excessive (*V.K. INDUSTRIES V/s. M.P. ELECTRICITY BOARD*^[1]).

In *VAKATI PRABHAKAR REDDY V/S. TENALI MOHAN RAO*^[2], a Division Bench of this Court, while summing up the legal position, observed that the Court may impose such conditions as it may consider necessary to set aside an *ex parte* decree and restore the suit and such conditions may include a direction to deposit costs or the decretal amount or any portion thereof, subject to the same being reasonable. This, according to the Division Bench, would depend upon the facts and circumstances of each case and discretion would have to be properly and judiciously exercised by the Court.

Again, in *SHAIK AHMED MOHAMMAD V/s. DAMODARDAS HARIDAS AND SONS, SECUNDERABAD*^[3], a learned Judge of this Court pointed out that no hard and fast rule could be laid down with regard to the conditions that could be imposed while setting aside an *ex*

parte decree and whether such conditions are onerous or justifiable would have to be decided in the facts and circumstances of that particular case.

Significant to note, in **V.K. INDUSTRIES¹**, the suit amount was Rs.3,84,455.44 ps. and the condition imposed by the trial Court to set aside the *ex parte* decree was to deposit a sum of Rs.2.00 lakh. The Supreme Court held the same to be onerous and substituted the said figure with the lesser figure of Rs.50,000/-. In **VAKATI PRABHAKAR REDDY²**, the condition imposed was that 75% of the decretal amount should be deposited along with costs of Rs.10,000/-. The Division Bench was of the opinion that this condition was onerous and directed deposit of a sum of Rs.1,00,000/- along with costs. In **SHAIK AHMED MOHAMMAD³**, the condition imposed was that 1/4th of the decretal amount should be deposited. The learned Judge was of the opinion that this condition was onerous and directed deposit of the costs alone.

In the light of the above legal position, this Court would have to examine as to whether the exercise of discretion by the trial Court in directing the petitioner/defendant to deposit half the suit amount is justifiable.

The suit was filed on the basis of a promissory note and the claim of the petitioner/defendant is that he neither borrowed any money from the plaintiff nor had he executed any promissory note in her favour. No doubt, the petitioner/defendant was quite lax in the matter as is clear from the narration of facts hereinabove. However, that by itself is not sufficient to require him to pay half the suit amount at this stage when his defense is still to be put to test. As the trial Court was itself of the opinion that he should be given an opportunity to do so, requiring him to deposit half the suit amount as a condition precedent is excessive and onerous.

The order under revision is accordingly modified directing the petitioner/defendant to deposit 1/4th of the suit amount to the credit of the suit within two weeks from the date of receipt of a copy of this order.

Subject to such deposit being made, the subject I.A. is allowed and the trial Court shall proceed with the matter in accordance with law. The petitioner/ defendant shall not cause any delay in the suit proceedings upon restoration and the trial Court is at liberty to pin him to a stringent time schedule.

The civil revision petition is allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

11th AUGUST, 2015
PGS

[\[1\]](#) (2002) 3 SCC 159

[\[2\]](#) 2003 (2) ALT 76 (D.B.)

[\[3\]](#) 2009 (5) ALD 110