

HON'BLE SRI JUSTICE R. KANTHA RAO
Civil Revision Petition No.4974 of 2015

ORDER:

Heard Sri Rambabu Koppineedi, learned counsel appearing for the petitioner. Though served with notices, the respondents did not appear in person nor is there any representation made on their behalf.

2. This civil revision petition is filed under Section 115 of CPC to set aside the impugned order passed in EA No.230 of 2014 in EA No.234 of 2010 in EA No.169 of 2010 in EP No.67 of 2008 in OS No.48 of 2005 on the file of the Senior Civil Judge, Razole, East Godavari District.

3. Learned counsel appearing for the petitioner submits that the petitioner made an application before the executing court to club the petition to condone the delay in filing the petition to set aside the *ex-parte* decree and the petition to set aside the *ex-parte* decree and the same was dismissed by the trial court through the impugned order.

4. A perusal of the impugned order passed by the trial court shows that the petitions and the execution petition proceedings cannot be clubbed together. The petitioner relied upon a judgment of this court in '**Kondaveeti Venkata Appa Rao vs. Kondaveeti Jaga Mohan Rao**^[1]', wherein the learned single Judge of this Court took a view that once a petition under Order 9 Rule 13 seeking to set aside *ex-parte* decree is pending, the court concerned is not supposed to proceed with the execution petition. The same judgment was cited before the executing court also, but the executing court only stated that the said decision is not applicable to the facts of the present case, but did not assign any convincing reasons as to why no orders were passed in the petition to set aside the *ex-parte* decree and also in the petition to

condone the delay in filing the petition to set aside the *ex-parte* decree. Thereafter, the executing court proceeded with the execution.

5. The petition to set aside the *ex-parte* decree as well as the execution proceedings are pending before the same court. Therefore, the learned Senior Civil Judge ought to have decided the petition to set aside the *ex-parte* decree prior to proceeding with the execution. The order passed by the learned Senior Civil Judge, is therefore, liable to be set aside and is accordingly set aside.

6. In the circumstances, the learned Senior Civil Judge, Razole, is directed to dispose of the petition filed under Section 5 of the Limitation Act, as well as the petition under Order 9 Rule 13 CPC, before proceeding with the execution petition.

7. The civil revision petition is accordingly disposed of. No order as to costs. Miscellaneous petitions, pending if any in this civil revision petition, shall stand closed.

R. KANTHA RAO, J

Date: 23.12.2015
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HON'BLE SRI JUSTICE R. KANTHA RAO

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