

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

CIVIL REVISION PETITION No.4682 of 2013

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ORDER:

This Civil Revision Petition is filed challenging the order dt.19-07-2013 in I.A.No.19 of 2012 in O.S.No.114 of 2011 of the III Senior Civil Judge, City Civil Court at Secunderabad.

2. The petitioner herein is defendant in the suit. The respondent had filed the suit against petitioner for recovery of a sum of Rs.7,39,000/- on the basis of a mortgage alleged to have been entered into by petitioner with respondent. An exparte decree was passed in the suit on 02-12-2011 against petitioner.

3. Contending that she is suffering from jaundice, the petitioner filed an application I.A.No.19 of 2012 to set aside the exparte order dt.02-12-2011. This application was filed on 24-12-2011 within 30 days from the date on which the exparte decree was passed.

4. The Court below allowed the said application by the impugned order on condition of petitioner depositing half of the suit amount and total suit costs.

5. This order is challenged in this Revision.

6. The learned counsel for petitioner Sri K.Venugopal Reddy contends that such an onerous condition must not be imposed for setting aside the exparte decree and that the order passed by the Court below therefore cannot be sustained. He relied upon the decisions in **Tea Auction Ltd. Vs. Grace Hill Tea Industry and another**^[1] and **Polasani Sucharitha Vs. Margadarsi Chit Fund Ltd., Mukarampura, Karimnagar and others**^[2].

7. The learned counsel for respondent Sri A.Pulla Reddy, on the other hand, supported the order passed by the Court below and contended that the conduct of petitioner was such that the Court was justified in imposing conditions contained in the impugned order.

8. In **Tea Auction Ltd.** (1 supra), the Supreme Court has held that while setting aside an exparte decree, the Court could put the defendants to terms, but such terms should not be unreasonable or harshly excessive. In that case while setting aside the exparte decree, the High Court had directed the defendants to furnish bank guarantee for a sum of Rs.37.00 lakhs claimed in the suit or in the alternative to deposit the said sum in cash. The Supreme Court set aside the said order, on condition that

the defendant furnishes security to the extent of Rs.5.00 lakhs only.

9. Similar view was expressed in **Polasani Sucharitha** (2 supra). In this decision it was held that while setting aside an exparte decree, imposing of conditions for depositing costs or part or whole of the suit amount as a condition precedent for entertaining the application, even before going into its merits, is not permissible.

10. In view of the above decisions, I am of the opinion that the order passed by the Court below in directing the petitioner to deposit half of the suit amount and total suit costs as condition precedent for setting aside the exparte decree passed against her, is not justified.

11. Therefore, the Civil Revision Petition is allowed and the impugned order in so far as it directed the petitioner to deposit half of the suit amount and total suit costs is set aside and the petitioner is directed to deposit costs of Rs.3,000/- to the credit of the suit within a period of two weeks from the date of receipt of a copy of this order. In default of such deposit, this Revision shall stand dismissed. No costs.

12. Since the suit is of the year 2011, the Court below shall endeavour to dispose it of within six months from the date of receipt of a copy of this order.

13. As a sequel, miscellaneous petitions pending if any,
shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 25-06-2015

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[\[1\]](#) 2006(6) ALD 76(SC)

[\[2\]](#) 2007(5) ALD 293 (DB)