

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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C.R.P.No.1736 of 2016

ORDER:

Sri Nooka Jagannadham, learned counsel for the petitioner, has filed a memo, along with the endorsement of Sri D.Apparao, Advocate for the respondent/plaintiff before the Court below, which shows that the notice was served on Sri D.Apparao, Advocate on 04.04.2016 despite which no counsel has entered appearance on behalf of the respondent-plaintiff.

The order, under challenge in this revision, was passed by the Principal Junior Civil Judge, Visakhapatnam, in I.A.No.232 of 2016 in O.S.No.628 of 2015 dated 26.02.2016 whereby the application to set aside the *ex parte* decree was allowed on deposit of Rs.2,00,000/- in Court on or before 28.03.2016.

The plaint in O.S.No.628 of 2015 records that the amount due from the petitioner-defendant herein was Rs.2,77,600/- i.e principal amount of Rs.2,00,000/- and interest thereon, till the date of filing of the suit, as Rs.77,600/-. By the order under revision, the Court below set aside the *ex parte* decree on condition that the petitioner deposited Rs.2,00,000/- in Court. Aggrieved thereby, the present revision.

In the order under revision, the Court below noted the contention of the petitioner-defendant that on 16.11.2015, when the matter was posted for cross-examination of P.W.1 subject to condition, his counsel had informed him over phone to attend before the Court and seek adjournment because he was held up at his native place; the Court had called him, recorded no representation, and had closed cross examination of P.W.1; the matter was posted to 04.12.2015 for the evidence of the other side, but the petitioner could not appear in Court because of jaundice. The Court below also noted the submission, urged on behalf of the respondent-plaintiff, that the petitioner-defendant was trying to drag on the matter by filing a petition without cause, and to have submitted his no objection to the petition being allowed on imposition of condition of payment of half the decretal amount. The Court below, thereafter, recorded that, after closure of evidence of P.W.1, the matter was posted on four different occasions, during which there was no representation and this showed the

defendant's intention to drag on the proceedings.

Sri Nooka Jagannadham, learned counsel for the petitioner, would request one more opportunity to be given to the petitioner, and assures that the petitioner-defendant would not seek adjournment in future and would cooperate for early disposal of the suit.

The suit relates to the year 2015 and it does appear, from the documents placed for my perusal, that Rs.2,00,000/- was directed to be deposited even without the respondent-plaintiff filing a counter to the I.A. As the condition of deposit of Rs.2,00,000/- i.e entire principal amount is onerous, and as the petitioner cannot at the same time be permitted to seek restoration without compensating the respondent-plaintiff for the inconvenience caused by his not being present in the Court on more than four occasions, I consider it appropriate to set aside the *ex parte* decree on condition that the petitioner pays the respondent-plaintiff costs of Rs.5,000/- (Rupees Five Thousand Only) within four (4) weeks from today. On failure to pay the costs, within the aforesaid period of four weeks from today, the order passed earlier by the Court below shall revive.

The C.R.P. is, accordingly, allowed. Miscellaneous Petitions pending, if any, shall also stand disposed of.

RAMESH RANGANATHAN, J

07th April 2016.
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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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Date: 07.04.2016

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