

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CIVIL REVISION PETITION No.5882 OF 2016

ORDER:

The Civil Revision petition is filed against the order dated 02.11.2016 passed in IA.No.68 of 2016 in OS.No.99 of 2009 wherein the Court below while allowing the petition imposed a condition directing the petitioners to deposit 1/3rd of the decretal amount, and failing which the said IA stands dismissed.

Learned counsel for the petitioners submits that when once the decree is set aside there cannot be any condition to deposit part of the decretal amount. As such, the condition to deposit 1/3rd of the decretal amount is erroneous. In support of his contention he relied on the Judgment in ***The Jeypore Sugar Company Limited v. Pamerla Suryarao*** reported in **1996 (2) ALT 68.**

This Court in the aforesaid Judgment held as follows;

“Allowing the application under Order 9 Rule 13 CPC enables the defendant to contest the claim of the plaintiff. If that is so, it will be unreasonable, illogical and arbitrary for the Court to impose liability on defendant to pay the suit claim even before adjudication on rival claims takes place and the Court decides to decree the suit. However, the Court while allowing an application under Order 9, Rule 13 CPC in appropriate cases, order costs of the application including the adovcate's fee.”

In view of the above, while allowing the petition under Order 9 Rule 13 CPC imposing a condition on the petitioners to

deposit 1/3rd of the decretal amount is erroneous and is liable to be set aside. Since it is stated that petitioners have already deposited costs, the condition to deposit 1/3rd of the decretal amount is set aside.

Accordingly, the civil revision petition is allowed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

30.12.2016
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A.RAJASHEKER REDDY, J

