

**HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A. SHANKAR
NARAYANA**

**CIVIL MISCELLANEOUS APPEAL No.803 OF
2015**

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JUDGMENT: (Per Hon'ble Sri Justice R. Subhash Reddy)

This Civil Miscellaneous Appeal is filed by the appellant, who is defendant in O.S. No.595 of 2013, aggrieved by the order, dated 10-11-2014, in I.A. No.1450 of 2014 in O.S. No.595 of 2013, passed by the learned Principal District Judge, Ranga Reddy District at L.B. Nagar.

2. The respondent herein has filed the aforesaid suit for recovery of money of Rs.26,00,000/- (Rupees twenty six lakhs only). In the said suit, at the first instance, after service of suit summons on the appellant - defendant, he has not entered his appearance, as such, he was set *ex parte*. On the application made by the appellant herein, such *ex parte order* was set aside by the trial Court. Even thereafter, when the matter was called on 16-06-2014 for cross-examination of PW.1, there was no representation on behalf of the appellant, as such, an *ex parte* decree was passed by the trial Court.

3. To set aside such *ex parte* decree, the appellant – defendant has filed I.A. No.1450 of 2014, and the same was dismissed by impugned order, dated 10-11-2014.

4. Heard Sri N. Indrasena Reddy, learned counsel for the appellant - defendant, and Sri C.V. Bhaskar Reddy, learned counsel for the respondent - plaintiff.

5. It is contended by the learned counsel for the appellant that on 16-06-2014 the appellant could not attend the trial Court as his son was not well and, in spite of making such statement in the affidavit filed by him in support of the petition, the trial Court dismissed the petition. It is further submitted that though sufficient cause has been mentioned for his absence on 16-06-2014, the trial Court, without considering the same, has passed the impugned order.

6. On the other hand, it is submitted by the learned counsel for the respondent – plaintiff that after service of suit summons the appellant did not make his appearance and he was set *ex parte*, and even thereafter when the matter came up for cross-examination of PW.1, there was no representation on behalf of the appellant, as such, he was set *ex parte* and the trial Court passed the decree. The appellant has not assigned any valid reasons in the affidavit filed in support of I.A.No.1450 of 2014 to set aside such *ex parte* order and, therefore, sought to dismiss the

appeal.

7. Perused the impugned order and the material on record. The material on record reveals that the respondent – plaintiff filed the suit (O.S. No.595 of 2013) for recovery of money of Rs.26.00 lakhs against the appellant – defendant based on a pro-note. The appellant filed his written statement denying the execution of such pro-note. It is true, that in the suit, after service of suit summons on the appellant, when the matter was called before the trial Court, he did not appear and, as such, he was set *ex parte*, which was set aside by the trial Court on the application made by the appellant. Subsequently, on 16-06-2014, the matter came up for cross-examination of PW.1, and even on that day as there was no representation on behalf of the appellant, the trial Court set the appellant *ex parte*, and, thereafter, passed the decree.

8. The reason assigned by the appellant in the affidavit filed in support of petition to set aside such *ex parte* decree, is that his son was not well and his presence was very much required, as such, he could not attend the trial Court when the case was called on 16-06-2014. It is true, that the appellant has not filed any document in support of his statement. But, at the same time, there is no reason to disbelieve such statement made by the appellant in the affidavit filed in support of I.A.

No.1450 of 2014.

9. Having regard to the nature of claim made in the suit and the reasons assigned in the affidavit, we are of the view, that it is a fit case to allow the appeal and give further opportunity to the appellant by setting aside the impugned order, however, with a direction to the trial Court to dispose of the suit within a timeframe.

10. For the aforesaid reasons, the Civil Miscellaneous Appeal is allowed, and the order, dated 10-11-2014, is set aside. Consequently, I.A. No.1450 of 2014 stands allowed. However, the Principal District Judge, Ranga Reddy District at L.B. Nagar, is directed to dispose of O.S. No.595 of 2013 as expeditiously as possible, preferably within a period of four (04) months from today by avoiding unnecessary adjournments. There shall be no order as to costs.

11. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal, stand disposed of.

R. SUBHASH
REDDY, J

A. SHANKAR NARAYANA, J

January 05, 2016.

Mgr