

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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C.R.P.No.578 of 2015

AND

C.R.P.No.845 OF 2015

COMMON ORDER:

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The Civil Revision Petition No.578 of 2015, under Article 227 of the Constitution of India, by the plaintiff is directed against the order dated 2nd December, 2014 passed by the learned VI Additional Senior Civil Judge, Visakhapatnam in I.A.No.651 of 2014 in O.S.No.964 of 2013 filed by the defendants under Order IX Rule 13 of the Code of Civil Procedure, 1908 ('the Code', for brevity) requesting to set aside the *ex parte* decree dated 25.06.2014 passed against them in the aforementioned suit.

1.1 The Civil Revision Petition No.845 of 2015, under Section 115 of the Code by the plaintiff in the aforementioned suit is directed against the order dated 2nd December 2014 whereby E.P.No.150 of 2014 in O.S.No.964 of 2013 is closed pursuant to the orders setting aside the *ex parte* decree.

2. I have heard the submissions of the learned counsel for the plaintiff/revision petitioner and the learned counsel for defendants/respondents. I have perused the material record.

3. Dealing first with the revision petition, which is filed assailing the order setting aside the *ex parte* decree, it is to be noted that the defendants in support of their request for setting aside the *ex parte* decree, *inter alia*, urged as follows:

The suit is filed by the plaintiff on the foot of a promissory note; the defendants having entered appearance have not filed the written statement; therefore, they were set *ex parte*; later the suit was decreed *ex parte* on 25.06.2014. The 1st defendant is a retired employee of the KGH. The 2nd defendant, who is his daughter, is an employee of a bank. The 1st defendant is of 64 years of age and is a diabetic. At the relevant time she was not in a position to move out of the house without assistance on account of her

advanced age and ailments like high fever, knee pains and chronic diabetic problems. Therefore, she could not either attend before the Court or personally give instructions to the counsel for filing the written statement; in the circumstances, the *ex parte* decree was passed.

4. The plaintiff while resisting the said application of the defendants had denied the averments made in support of the request of setting aside the *ex parte* decree and had prayed for dismissal of the petition. It is mainly contended before the trial that no medical certificate is filed even though the contention of the defendants was that the 1st defendant was unwell.

5. In this back drop, submissions were made by both the sides in line with the pleadings. I have perused the material record including the order impugned.

6. Admittedly, the defendants having entered appearance had failed to file the written statement; therefore, they were set *ex parte*; and, the *ex parte* decree was passed within a week thereafter. Subsequently, the petition to set aside the *ex parte* decree was filed stating the reasons which lead to the passing of the *ex parte* decree. The trial Court recorded findings to the effect that the defendants have shown sufficient cause for setting aside the *ex parte* decree and that the non filing of a medical certificate is no ground to reject the contention of the defendants. Having so found, the Court below had held that sufficient grounds are made out for setting aside the *ex parte* decree; accordingly the *ex parte* decree was set aside, subject to the condition of the petitioner depositing the suit costs. The said condition was complied with. Therefore, the petition to set aside the *ex parte* decree stood allowed on 02.12.2014. In the considered view of this Court for the sole reason that the medical certificate of the 1st defendant is not filed, the application to set aside the *ex parte* decree need not be dismissed having regard to the facts and the circumstances of the case.

7. Having thus, carefully examined the facts and considered the submissions of both the sides, this Court is satisfied that in the facts and

circumstances, the trial Court is justified in setting aside the *ex parte* decree and that, therefore, the order impugned in C.R.P.No.578 of 2015 does not warrant interference.

8. The order assailed in the second revision is a dependent order. Hence, the second order closing the EP, which was passed by the trial Court as a sequel to the orders in I.A.No.651 of 2014 in O.S.No.964 of 2013 setting aside the *ex parte* decree, needs no interference in view of the orders *supra* of this Court confirming the orders in the afore mentioned IA.

9. In the result, C.R.P.No.578 of 2015 is dismissed confirming the order dated 02.12.2014 in I.A.No.651 of 2014 in O.S.No.964 of 2013. As a sequel to the said orders, the C.R.P. No.845 of 2015 is also dismissed. Since in the execution proceedings, the salary of the 2nd defendant/JDr was already attached and certain amount was already received by the Court below and is lying to the credit of the EP, this Court directs, to meet the ends of justice, that the amount lying to the credit of EP shall not be withdrawn by either of the parties till the disposal of the suit. The said amount shall be invested in a fixed deposit by the Court below in accordance with established procedure so that the ultimate successful party would receive the said amount with accrued interest. Since the attachment against the salary of the 2nd defendant was already affected, it is made clear that in view of the setting aside of the *ex parte* decree and the closer of the EP, the trial Court shall inform the garnishee not to send further amounts from 2nd December, 2014 onwards, if any deducted from the salary of the 2nd defendant, to the Court. The Garnishee is at liberty to release such amounts deducted after 2nd December 2014 to the 2nd defendant directly, if not already sent to the Court of execution. Considering the fact that the suit is of the year 2013 and the further fact that the written statement of the defendants is already filed, the trial Court shall make an endeavour to dispose of the suit as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order.

There shall be no order as to costs in both the revisions.

Miscellaneous petitions pending, if any, in these revision petitions shall stand closed.

JUSTICE M. SEETHARAMA MURTI

12.04.2016
KVRM