

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.5883 OF 2016

ORDER:

Heard learned counsel for revision petitioner and perused the impugned order dated 28.10.2016.

2) A perusal of the record shows I.A. No.295 of 2016 is filed under Order IX Rule 13 read with Section 151 of C.P.C praying to set-aside the ex parte decree and judgment passed in O.S. No.455 of 2011. The said application was allowed on contest to set-aside the *ex parte* decree subject to the conditions of (i) filing of written statement within the date fixed by the Court and (ii) also to furnish third party security for the suit amount. The revision is maintained impugning said condition of furnishing third party security as onerous.

3) Learned counsel for the revision petitioner placed reliance on the Division Bench expression of this Court in ***Polasani Sucharitha vs Margadarsi Chit Fund Limited Rep. by its Branch Manager***¹ where it is observed that legal obligation imposed on the Court to impose conditions for setting aside the *ex parte* decree as to costs or as to payment of decretal amount in whole or part or as to other conditions. However, onerous conditions shall not be imposed except under special circumstances and for exceptional reasons, which have to be stated in the order. Therein conditions were imposed even for entertaining the application that was held impermissible.

4) In fact, in the present case, the condition imposed is besides filing of written statement, which is mandatory to be filed

¹ 2007 (5) ALT 722

within 30 days, subject to maximum period 90 days the Court can extend that is no way an onerous condition.

4) Coming to the other condition of furnishing of third party security by giving time in allowing the application concerned, it is to see whether onerous or not. In fact, the expression of the Apex Court in ***Tea Auction Ltd vs Grace Hill Tea Industry and another***² held that the terms can be imposed reasonably. Directing to pay the entire suit claim is not reasonable but for half of the amount or the like in directing to furnish security to the extent of Rs.5,00,000/- there in the suit claim is Rs.37,00,000/-.

5) Having regard to the above, the revision is allowed by modifying the order of the lower Court to the extent of payment of suit costs to respondent (plaintiff) and also furnishing of third party security to half of the suit amount either cash deposit or third party immovable property that can be withdrawn by the Decree Holder on furnishing security in case of cash deposit. However, it is made clear so far as third party immovable security concerned, a bond is to be executed on Rs.100/- stamp paper by depositing original title deeds in favour of the Court to the credit of the Suit to enable the Court to release in the event of success. No order as to costs.

6) Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.16.12.2016
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² AIR 2007 SC 67