

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.5258 OF 2013

ORDER:

The Civil Revision Petition is filed against the order dated 29.10.2013 passed in I.A. No.919 of 2013 in O.S. No.59 of 2011 on the file of Special Sessions Judge for trial of cases under SCs/ STs (POA) Act-cum Additional District Judge, Khammam.

2) Heard learned counsel for the revision petitioner and learned counsel for the respondent. Perused the material on record.

3) The revision petitioner is the defendant in O.S. No.59 of 2011, which was filed by the respondent herein. The suit O.S. No.59 of 2011 was filed for recovery of money. The defendant having been served as contemplated under Order V Rule 17 C.P.C from the door locked, the Court treated it as deemed service, was remained exparte and set-exparte and later proceeded with trial, the trial Court passed an exparte decree on 07.03.2012. It is subsequently, the defendant filed I.A. No.919 of 2013 to set aside the exparte decree and the trial Court vide impugned order dated 29.10.2013 directed the petitioner/ defendant to deposit half of the decretal amount within 60 days. Therefrom, it is impugning the same, the present revision is filed and the same is pending all through.

4) The contention in the grounds of revision is that the condition imposed on the revision petitioner/ defendant is unsustainable and could not have been imposed by the lower Court and the other contention of the revision petitioner is that he already filed I.P. No.10 of 2011 on the file of Senior Civil Judge,

Kothagudem and the same is pending. The main allegation of the revision petitioner is that he came to know the passing of the exparte decree when he went to Kothagudem to the I.P. hearing. Once there is a deemed service and even otherwise once the Court considers the request and disposes the application, this court need not go into other merits and setting aside the ex-parte decree but for as to the condition is sustainable or not.

5) Learned counsel for the revision petitioner placed reliance on the expression of the Apex Court in **S.B.Sinha vs D.K.Jain**¹ wherein the suit is filed for recovery of money of Rs.37,26,498/- and obtained exparte decree. The trial Court passed a conditional order to set-aside the exparte decree to deposit the entire said claim of Rs.37,00,000/- either in form of bank guarantee or deposit the sum in cash and the contention raised therein is such a condition is unreasonable and having went unsuccessful. When the matter ultimately reached the Apex Court, the Apex Court on facts as per para Nos.24 and 25 observing the condition should not be unreasonable or harshly excessive by saying in view of the peculiar facts of the case only to subserve the ends of justice, the defendant was directed to furnish security to the extent of Rs.5,00,000/- to the satisfaction of the learned single Judge (trial Court).

6) The decision even on its reading in entirety_says it depends upon facts and circumstances of each case and the only principle laid down is a condition shall not be onerous or unreasonable even refereeing to the expression of the Single Judge

¹ AIR 2007 SCC 67

of this Court in ***Chekuri Malakondaiah and another Vs. State Bank of India, Kanigiri, rep. by its Branch Manager and Others***² referring to the three judge bench expression of the Apex Court in ***V.K. Industries and Others Vs. M.P. Electricity Board, Rampur, Jabalpur***³ observed that 50% of the suit amount to be deposited is just and reasonable, however, without interest and costs. The three judge bench expression of the Apex Court in V.K. Industries (supra), categorically says it all depends on facts of each case and in that case, the suit was filed for recovery of decretal amount of Rs. 3,84,455.44/- interest decreed exparte. Decree was set aside on the condition of defendants to deposit a sum of Rs.2,00,000/- with the trial Court and to furnish a bank guarantee for remaining sum claimed in the suit and the conditions imposed held on facts, were onerous and unreasonable. Deposit of Rs.1,00,000/- with trial Court, held, would be just and appropriate in the facts and circumstances of the case.

7) Having regard to the above, this Court by scanning the entire law vide order dated 09.08.2016 in C.R.P. No.333 of 2015, observed 1/3rd of the entire decretal amount with interest and the entire costs direction to deposit or pay to withdraw without furnishing security by the D.Hr sub serves the ends of justice.

8) Accordingly, the revision is allowed in part, by modifying the order of the lower Court directing to deposit 50% of the decretal amount into 1/3rd of the decretal amount with interest entirely due as on date and the entire costs, so as to receive by the D.Hr without furnishing security.

² 2014 (1) ALT 186

³ (2002) 3 SCC 159

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

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.19.08.2016
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