

THE HON'BLE MRS JUSTICE ANIS

C.M.A. NO.139 OF 2005

JUDGMENT:

This appeal is filed by the appellants/ petitioners/ defendants under Section XLIII Rule 1 (D) of C.P.C, aggrieved by the dismissal order dated 03.11.2004 passed in I.A. No.612 of 2002 in O.S. No.57 of 1992 on the file of Senior Civil Judge, Anakapalli.

2) For the sake of convenience, the parties hereinafter will be referred to as they were arrayed in the Original Suit.

3) The appellants are the defendants in O.S No.57 of 1992 and the respondent herein is the plaintiff. The said suit was filed for recovery of money. The defendants filed written statement in the suit and while the matter was coming up for cross examination of PW.1, the leg of defendant No.1 was fractured and he was bedridden. As the doctor advised him to take bed rest and not to move from the bed, he could not contact his counsel to give instructions and thereby, his counsel failed to cross examine PW.1. Therefore, the trial Court passed an exparte decree on 28.10.2002. They filed I.A. No.612 of 2002 praying the trial Court to set aside the exparte decree passed on 28.10.2002 to enable them to contest the suit.

4) In the counter, the respondent/ plaintiff opposed the petition on the ground that there are no bonafides in the petition and petitioners failed to produce medical certificate for alleged proof.

5) Basing on the record, the learned Senior Civil Judge dismissed I.A. No.612 of 2002 in O.S. No.57 of 1992 on 03.11.2004 on the ground that defendant No.1 failed to substantiate any valid reasons for his absence on the date of passing of exparte decree and is therefore not entitled to any relief of setting aside the exparte decree and accordingly, dismissed the petition.

6) Aggrieved by the orders of the trial Court, the defendants filed the present appeal.

7) Learned counsel for the appellants/ defendants argued that the appellant/ defendant No.1 was bedridden and as such he could not contact his counsel when the matter was posted for cross examination of PW.1. Therefore, the trial Court passed an ex parte decree on 28.10.2002.

8) On the otherhand, learned counsel for the respondent/ plaintiff argued that the trial Court rightly passed the ex parte decree and dismissed the I.A filed by the appellants/ defendants and there are no grounds to interfere with the same. He, therefore prayed to dismiss the present appeal.

9) Having regard to the submissions made by the learned counsel for both the parties, the point that arise for consideration is:

1. Whether the order passed by the trial Court is sustainable or not?

10. POINTS:

A perusal of the record shows that the suit is filed by the respondent/ plaintiff for recovery of money in the year 1992 and the trial commenced in the year 1999 by examining PW.1 on 16.07.1999 and from that day onwards, the matter was being posted for cross examination by the petitioners/ defendants. But the petitioners/ defendants could not proceed with the case and the learned counsel for the petitioners represented before the trial Court that he could not proceed with the cross examination of PW.1 in the absence of instructions from his parties. Therefore, the trial Court rightly passed an ex parte decree on 28.10.2002.

11) The main contention of the petitioners is that when the matter is posted for cross examination, defendant No.1 was bedridden

due to leg fracture and he failed to instruct his counsel for cross examination of PW.1. To prove these facts, the petitioners should have produced medical certificate to show that on the dates, defendant No.1 was bedridden and doctor advised him to take bed rest. But no such proof is filed. Further, the trial Court rightly held that the petitioners/ defendants were not properly prosecuting the case and failed to put forth any valid reasons for the absence of their counsel on the date of passing of the order and other previous dates. Hence, there are no grounds to interfere with the order passed by the Senior Civil Judge, Anakapalle in I.A. No.612 of 2002 in O.S. No.57 of 1992 dated 03.11.2004 and the appeal is liable to be dismissed.

12) Accordingly, the appeal is dismissed. No order as to costs.

13) Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

(ANIS, J)

Date:14.03.2016
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