

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.4598 of 2011

ORDER:

Heard the learned counsel for the defendants 1 and 2 among the three defendants of O.S. No.104 of 2010 on the file of Senior Civil Judge, Yellamanchili in the suit filed by plaintiff/1st respondent herein against three defendants including the 2nd respondent herein. The 3rd defendant is contesting the suit, defendants 1 and 2 originally remained exparte and they filed the application covered by the impugned order in I.A. No.198 of 2011 to set aside the exparte order and to permit to contest by receiving the written statement filed along with the application. The same was dismissed. In fact when some of the defendants are contesting the suit for others even remained exparte there is no limitation to file the application but for to exercise the judicial discretion that too when the 1st defendant is the main borrower wanted to contest and it is not even a summary suit of any leave to defend muchless any amount to deposit pursuant to any leave. The submission of let the 1st defendant be directed to deposit the amount cannot be considered and the dismissal of the petition by the trial Court practically unsustainable as could have been allowed at best subject to costs.

2) In the result, the revision is allowed and the order in I.A. No.198 of 2011 in O.S. No.104 of 2010 on the file of Senior Civil Judge, Yellamanchili is set aside and the application is allowed to set aside the exparte order against defendant Nos.1 and 2 by directing the trial Court to receive the written statement and permit them to participate in the trial subject to payment of costs of Rs.2,000/- by defendants 1 and 2 to the plaintiff by payment to the advocate, if not to deposit. Since the learned counsel for the respondent represented

that the learned counsel for the petitioner herein paid the above costs to her, this petition is allowed.

3) Miscellaneous petitions, if any pending in these two appeals shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:03-02-2016

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