

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 4216 of 2016

ORDER:

The petitioner is defendant in O.S.No.123 of 2015 on the file of the Senior Civil Judge, Markapur. The respondent herein filed the said suit for recovery of amount and an *ex parte* decree was passed therein on 14.10.2015. The petitioner herein filed I.A.No.178 of 2016 seeking to set aside the *ex parte* decree stating that he could not file written statement as he fell sick and transferred to Mokshagundam Village from Tarlupadu and he lost his cell phone. He further stated that he is willing to file written statement along with the said application. The respondent filed a counter denying the said averments and stating that the petitioner filed the present Interlocutory Application only after receipt of notice in E.P.No.200 of 2015 and that he intends to drag on the proceedings.

Along with the present Interlocutory Application, the petitioner filed I.A.No.177 of 2016, as there was delay of 81 days and the said application was allowed by the trial Court. But, however, while allowing the present Interlocutory Application, the trial Court imposed the condition of deposit of half of the suit amount before the Court on or before 16.08.2016, by observing as under:

“According to the petitioner he could not contact his counsel because of his ill health, transfer and loss of cell phone. The petitioner did not file any document to support his version. The respondent filed E.P.No.200 of 2015 against the petitioner. It is for the petitioner to defend his case properly. The petitioner is negligent in defending his case. The petitioner has taken lame excuses to get over the

ex parte decree. If the ex parte decree is set aside on baseless grounds, the unscrupulous litigants protract the litigation. It is the petitioner responsible for passing of ex parte decree. The petitioner expressed that he has good case to succeed. It is always better to decide the case on merits by giving opportunity to both parties. Therefore, I feel it is just and proper to consider the petition by imposing condition of depositing half of the suit amount. The point is answered accordingly.”

Admittedly, it is the case of *ex parte* decree and the petitioner should have been given an opportunity. The petitioner can be put on some terms, but the imposition of deposit of half of the suit amount is onerous.

In the facts and circumstances, the order passed by the trial Court dated 02.08.2016 is modified to the extent of depositing an amount of Rs.20,000/- (Rupees twenty thousand only) before the Court below on or before 30.11.2016. The trial Court shall dispose of the suit as expeditiously as possible, but not later than 30.04.2017 and the petitioner shall cooperate with the same.

The Civil Revision Petition is accordingly partly allowed to the extent indicated above.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

(A.RAMALINGESWARA RAO, J)

Date: 18.11.2016

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