

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5006 of 2015

ORDER:

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This Civil Revision Petition under Article 227 of the Constitution of India is filed by the petitioner/4th defendant assailing the orders dated 07.09.2015 of the learned I Additional District Judge, Ranga Reddy District at L.B. Nagar passed in IA.no.1100 of 2015 in IA.no.653 of 2014 in OS.no.817 of 2011.

2. I have heard the learned counsel for the revision petitioner/4th defendant ('the 4th defendant', for brevity) at the admission stage. I have perused the material record.

3. The facts, which arise for consideration, as per the submissions made before this Court, are as follows:

The plaintiff filed the suit for specific performance on the basis of an agreement of sale. In the suit all the defendants had remained *ex parte*. A decree was passed on 06.03.2014 directing the plaintiff to deposit the balance of sale consideration within the time fixed in the decree and directing the defendants to execute the sale deed thereafter in favour of the plaintiff in respect of the plaint schedule property as per the terms of the decree.

Subsequently, the 4th defendant had filed IA.no.653 of 2014 seeking to set aside the *ex parte* decree. The trial Court had allowed the application for setting aside the *ex parte* decree subject to the condition that the 4th defendant shall deposit 1/4th of the suit costs on or before 22.07.2015 and that failing which, the petition stands dismissed. The 4th defendant had failed to deposit the said costs within the said time. Therefore, the conditional order became operative and the petition of the 4th defendant to set aside the *ex parte* decree stood dismissed. Therefore, the 4th defendant filed the subject IA requesting to recall the orders dated 22.07.2015 in the aforementioned IA, which was dismissed for non compliance of the conditional orders and for

restoring the orders dated 22.06.2015. Indeed the 4th defendant had deposited the Costs imposed on 30.07.2015 by way of a challan issued on 22.07.2015. The said application was resisted by the plaintiff by filing a counter. The trial Court dismissed the said application *inter alia* holding that when the 4th defendant was not in a position to comply with the conditional order within the time frame, he ought to have filed, within the time fixed, an application for extension of time and that he did not do so and that his request for recalling the order deserves no consideration as he had simply alleged that due to a technical reason, the computer systems in the Court did not work and therefore, a challan for deposit of the amount could not be granted to him in time and hence, he could not deposit the 1/4th of the suit costs as directed in the orders within the time frame fixed by the Court. Aggrieved of the said orders, the present CRP is filed.

4. The learned counsel for the petitioner while stating the facts which lead to the filing of the revision petition, which are narrated supra, would submit that though the petitioner could not deposit the amount within the time granted by the Court, the required amount was deposited on 30.07.2015 immediately after the challan was issued and that, therefore, there are *bona fides* on the part of the petitioner and hence, the trial Court ought to have recalled the order and restored the petition and ought to have considered the deposited amount as valid deposit and valid compliance of the condition and ought to have granted the relief.

5. I have bestowed my attention to the facts and the submissions. The petitioner, in the circumstances stated, when he is not in a position to deposit the amount, for whatever reasons, within the time frame in the conditional order, he ought to have filed an application before the trial Court under Section 148 of the Code of Civil Procedure, 1908 ('the Code', for short) for extension of time for compliance of the conditional order, as rightly observed by the trial Court. He did not do so. He had allowed the conditional order to become operative and for failure of the 4th defendant in depositing the amount within the time granted and for not seeking extension of time, the

application in IA.no.653 of 2014 stood dismissed. Now the learned counsel makes two fold submissions. His first submission is that the amount was deposited subsequently on 30.07.2015 within a short time though there was a delay for reasons beyond the control of the party; and the second submission is that an application was in deed filed under Section 148 of the Code for extension of time in SR.no.3222 of 2015 dated 27.07.2015, but, the same was returned by the trial Court to explain as to how the petition is maintainable. In the circumstances, the 4th defendant, who was granted the relief subject to a condition and who had paid the amount though belatedly, is not in a position to reap the benefits of the order, which is a conditional order made in IA.no.653 of 2014. In fact the trial Court ought to have disposed of both the petitions together after giving an opportunity to the petitioner to resubmit the application that was returned. In view of the facts peculiar to this case, this revision petition can be disposed of at the admission stage remitting the matter to the Court below to consider the subject interlocutory application along with the application in SR.no.3222 of 2015 dated 27.07.2015 filed under Section 148 of the Code for extension of time.

6. In the result, the Civil Revision Petition is allowed and the order impugned is set aside and IA.no.1100 of 2015 in IA.no.653 of 2014 is remitted to the Court below to consider the same afresh along with the application filed for extension of time after registering the same on re-submission of the same within three weeks from the date of the receipt of a copy of this order by the petitioner as undertaken at the time of hearing. Accordingly, the petitioner is given liberty to re-submit his application in SR.no.3222 of 2015 filed seeking extension of time under Section 148 of the Code before the trial Court as directed supra. The trial Court is directed to entertain the said application, if it is otherwise in order, and give an opportunity to the plaintiff to file counter and then consider the said application also on merits as Section 148 of the Code dealing with enlargement of time envisages that such an application can be entertained even though the period originally fixed or granted might have expired. It is made clear that the trial Court shall now dispose of the said two applications

on merits and in accordance with the procedure established by law, however, uninfluenced by its observations, if any, made in the order in IA.no.1100 of 2015. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.SEETHARAMA MURTI, J

28th March, 2016

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Issue CC by 04.04.2016

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