

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.1575 of 2016

ORDER:

This Civil Revision Petition is filed by the Petitioner/plaintiff aggrieved by the Order dt. 24.02.2016 passed by III Additional District Judge-Cum-Family Court at Srikakulam, in unnumbered application (G.R.No.512 of 2016) in I.A.No.335 of 2014 in O.S.No.03 of 2011.

2) The petitioner is the plaintiff, who filed O.S.No.03 of 2011 against the respondents/defendants, for recovery of money. The defendants were set *ex parte* in the said suit, an *ex parte* order was passed on 07.06.2012. Later, the defendants filed I.A.No.335 of 2014 under Order IX Rule XIII to set aside the *ex parte* decree. It appears, they also filed a Petition under Section 5 of Limitation Act, to condone the delay in filing the petition. The said delay petition was allowed on payment of costs and it appears that the defendants have deposited the costs. Thereafter, I.A.No.335 of 2014 came up for consideration, wherein, the petitioner/plaintiff filed his Counter and the matter was under enquiry. At that stage, on 01.12.2015, the trial Court passed the impugned Order to the effect that PW.1 was present and the respondent/plaintiff called absent and no representation and hence, he was set *ex parte* and as already Petition under Section 5 of Limitation Act was allowed, Petition under Order 9 Rule 13 CPC was also allowed and the ex-parte decree was set aside.

3) Aggrieved by the said Order, the petitioner/plaintiff filed the above said I.A.No..../16 (GR No.512 of 2016) in I.A.No.335 of 2014 in O.S.No.3 of 2011, to set aside the *ex parte* Order dt.01.12.2015 passed in I.A.No.335 of 2014 and permit him to cross examine PW.1. The said Petition was returned by the trial Court under the following Order:

“How this Petition is maintainable when the matter was already disposed of”.

Hence, the instant Civil Revision Petition by the petitioner/plaintiff.

4) Heard learned counsel for the petitioner and the learned counsel for respondents/defendants.

5) Learned counsel for petitioner/plaintiff submitted that the petitioner was hotly contesting I.A.No.335 of 2014 in O.S.No.3/2011 and in fact, he filed his counter and the matter was coming up for cross examination of PW.1 and on 01.12.2015, Junior Counsel requested the Court to pass over the matter stating that his senior was engaged in another Court and despite the same, the Court set the respondent/plaintiff *ex parte* and passed the impugned Order jeopardizing the valuable rights of the respondent/plaintiff therein. Further, when the petitioner/plaintiff filed I.A.No.---/2016 (GR No.512 of 2016) to set aside the *ex parte* Order in I.A.No.335 of 2014, the Court, without numbering the same and passing appropriate orders on merits, returned the petition

on flimsy and untenable grounds as to how the petition is maintainable when the matter was already disposed of. Learned counsel for petitioner vehemently argued that since the order passed in I.A.No.335 of 2014 was an *ex parte* order, the petitioner has every right to file a petition to set aside the *ex parte* order. Without considering the same, the trial Court erroneously returned the Petition. He, thus, prayed to allow this Petition and direct the trial Court to register the petition and pass appropriate orders.

6) Per contra, learned counsel for respondents/defendants opposed the petition stating that when the petition was simply returned and no order was passed thereon, the C.R.P itself is not maintainable.

7) In the light of above rival arguments, the point for determination is:

“Whether there are any merits in this petition to allow?”

8) **POINT:** A perusal of the Order dt. 01.12.2015 in I.A.No.335 of 2014 shows that the trial Court having observed that PW.1 was present and the respondent/plaintiff was absent and no representation, set the respondent/plaintiff *ex parte* and allowed the petition filed by the defendants under Order IX Rule XIII of CPC as the earlier petition filed under Section 5 of Limitation Act was already allowed and consequently set aside the *ex parte* order passed against them. It appears, aggrieved by the said Order, petitioner/plaintiff filed

I.A.No...../2016 (GR No.512 of 2016) to set aside the *ex parte* Order and permit him to cross examine PW.1 in I.A.No.335 of 2014 and the said petition was returned on 24.02.2016 with an observation that 'how the petition is maintainable when the matter was already disposed of'. I am unable to countenance the order passed by the trial Court. Since the main Petition in I.A.No.335 of 2014 was disposed of as *ex parte*, petitioner/plaintiff filed the above I.A to set aside the *ex parte* Order. Therefore, in my considered view, the trial Court ought to have numbered the said petition and disposed of on merits. Unfortunately, it failed to exercise the jurisdiction vested in it and instead returned the petition with untenable observation. Hence, I find merits in this petition to allow.

9) Accordingly, this Civil Revision Petition is allowed and the trial Court is directed to register I.A.No.../2016 (GR No.512 of 2016) in I.A.No.335 of 2014 in O.S.No.3 of 2011 and dispose of the said petition on merits expeditiously.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Dt: 02.06.2016

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