

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.2805 of 2016

ORDER:

Heard the learned counsel for the petitioner.

2. This Revision Petition is filed challenging the order dt.17-02-2016 in I.A.No.1166 of 2014 in I.A.No.336 of 2013 in O.S.No.5 of 2012 on the file of the learned Senior Civil Judge, West Godavari District at Tadepalligudem.

3. Petitioner is the defendant in the above suit. The said suit was filed for recovery of money by the respondent against the petitioner on the basis of a promissory note. After two attempts to serve summons through Court failed, Court ordered paper publication on 12-09-2012. Thereafter, the petitioner engaged an advocate who filed vakalat and the suit was posted for filing of Written Statement from time to time. On 20-11-2012, suit was posted to 27-11-2012 for filing Written Statement on payment of costs of Rs.50/-. Petitioner however did not pay the costs and also did not file Written Statement on 27-11-2012. She was called absent, set *ex parte*, P.Ws.1 and 2 were examined and Ex.A-1 was marked on 22-01-2013 and a judgment was pronounced decreeing the suit.

4. Petitioner filed I.A.No.336 of 2013 under

Order 9 Rule 13 CPC to set aside *ex parte* decree. It was allowed on 11-07-2014 with costs of Rs.1000/- directing that out of these costs, Rs.500/- shall be paid to the respondents, Rs.250/- shall be paid to the Bar Association, Tadepalligudem and Rs.250/- shall be paid to the Legal Services Authority, Tadepalligudem on or before 18-07-2014.

5. Since the officer was on casual leave, the matter was posted to 11-08-2014 and on that day costs were not paid. So petition was again dismissed.

6. Petitioner filed I.A.No.1166 of 2014 under Section 151 CPC read with 144 CPC to allow her to pay costs as per the order dt.11-07-2014 in I.A.No.336 of 2014 and to restore the said I.A. which was dismissed on 11-08-2014. It was allowed on 02-12-2014 on further costs of Rs.1000/-, out of which, Rs.500/- was directed to be paid to the respondent, Rs.250/- to the Bar Association, Tadepalligudem and Rs.250/- to the Legal Services Authority, Tadepalligudem, payable on or before 09-12-2014.

7. It was assailed in C.R.P.No.1030 of 2015 by the respondent. This Court set aside the order dt.09-12-2014 in I.A.No.1166 of 2014 and remanded matter back to the trial Court after hearing both sides by an order dt.19-11-2015.

8. Thereafter the matter was again taken up and the impugned order was passed dismissing I.A.No.1166 of 2014. The Court below held that since the pleading of the petitioner in I.A.No.1166 of 2014 was that she was suffering from ill-health because of which she could not pay the costs payable in I.A.No.336 of 2013 (directed by the Court below by its order dt.11-07-2014); and the petitioner failed to produce any medical certificates in support of that plea, the application filed by the petitioner was not *bona fide*. It observed that the petitioner was intentionally avoiding to attend the Court.

9. Challenging the same, this Civil Revision Petition is filed.

10. Learned counsel for the petitioner contends that the order passed by the Court below is unsustainable; that similar contention raised in another suit was being considered by the Hon'ble Supreme Court of India in S.L.P.No.10437 of 2015 and there was *status quo* order granted therein in December 2015; and in that view of the matter, this Court should allow this Revision Petition also. He further contended that the petitioner was right in invoking Section 144 CPC.

11. I have noted the submissions of the learned counsel for the petitioner.

12. From the facts narrated above, it is clear that

the petitioner had engaged a counsel in the suit and the suit was posted for filing of her written statement from time to time and on 20-11-2012, it was posted to 27-11-2012 for filing written statement on payment of costs. The petitioner admittedly did not pay the costs and did not even file written statement. She was set *ex parte* on 22-01-2013 and thereafter decree was passed after taking evidence on behalf of the respondent.

13. She filed I.A.No.336 of 2013 under Order 9 Rule 13 CPC. It was allowed on 11-07-2014 on payment of costs of Rs.1000/- but such costs were also not paid and the said I.A. was dismissed on 11-08-2014. To extend the time for payment of costs as directed in the order in I.A.No.336 of 2013, I.A.No.1166 of 2014 was filed. In support of the plea of the petitioner that she did not pay the costs directed to be paid in I.A.No.336 of 2013 as she was suffering from ill-health, no material was placed before the court below. In the absence of sufficient cause being shown by the petitioner in not paying costs, I am of the opinion that the Court below had rightly dismissed I.A.No.1166 of 2014.

14. As regards the plea of the petitioner that in S.L.P.No.10437 of 2015, similar plea raised by the petitioner in another suit was pending consideration, neither the order in the S.L.P. is placed before this Court nor the order of this Court which is impugned in the S.L.P.

is placed before this Court. Therefore, on the mere statement of the learned counsel for the petitioner, this Court cannot act.

15. As regards the contention of the petitioner that Section 144 CPC is applicable, the said provision provides for restitution of a benefit by the Court which had been granted to the opposite party though a Court order which had been varied or reversed or set aside subsequently in appeal or revision or other proceeding. The said provision has no application.

16. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by its power under Section 115 CPC. Therefore, the Civil Revision Petition is dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 24-06-2016

kvr