

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.3688 of 2017

ORDER:

The Order dated 10.07.2017 passed by the learned Senior Civil Judge, Gudur in I.A.No.671 of 2016 in O.S.No.152 of 2015, filed under Order IX Rule 13 of C.P.C. seeking to set aside the *ex parte* decree dated 15.07.2016, is challenged before this Court.

2) The Court below while ordering set aside of the *ex parte* decree, which was made on 15.07.2016, imposed a condition of depositing of the suit amount before the Court on or before 24.07.2017 with a further condition, failing to do so would result in dismissal of the I.A.No.671 of 2016.

3) Heard the learned counsel for the petitioner.

4) It is a case where no notice is required to be issued to the respondent on account of the fact that the order made by the learned Senior Civil Judge, Gudur, is totally against the law laid down by the Supreme Court and this court held in a large number of cases that while setting aside the *ex parte* decree the onerous condition shall not be imposed. It may be noted that the suit is of the year 2015 and *ex parte* order came to be passed on 15.07.2016. The fact that the Court below found that there was justifiable reason to set aside the *ex parte* decree established that there were merits in the application made by the petitioner. Though it is permissible to impose costs, such costs cannot be a direction to deposit the suit claim amount. This issue is no longer *res integra* as it is settled in **GMG Engineering Industries and**

Others v ISS Green Power Solution and Others¹ and Gurram Anjeswar v. S. Nagalaxmi² apart from many other judgments.

5) Accordingly, the Civil Revision Petition is allowed setting aside the impugned order and the costs are modified as 'on payment of costs of Rs.10,000/- to be payable to the respondents' within 10 days from the date of receipt of this order.

6) Consequently, miscellaneous petition pending, if any, shall stand closed. There shall be no order as to costs.

CHALLA KODANDA RAM, J.

Date:04.08.2017
Ssv



¹ 2015 (5) ALD 32 (SC)

² 2016 (6) ALD 203