

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.207 OF 2013

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the order, dated 04.12.2012, in I.A.No.156 of 2012 in O.S.No.62 of 2013 passed by the V Additional Senior Civil Judge, Guntur, wherein the trial court set aside the decree and judgment dated 11.02.2005 in O.S. No.62 of 2013 on payment of costs of Rs.1275/- to the respondent, who is the revision petitioner herein.

The revision petitioner challenged the order on various grounds. But it is clear from the order that the petition under Section 5 of Limitation Act was filed only to condone the delay of 2550 days in filing the petition to set aside the exparte decree dated 11.02.2005 in O.S. No.62 of 2010. The trial court concluded that if the decree and judgment are not set aside the 1st respondent herein will suffer irreparable loss and hence set aside the decree dated 11.02.2005 in O.S. No.62 of 2003.

The trial court even without considering the scope of the application, in the petition filed under Section 5 of the Act, set aside the decree by exercising power under Rule 13 of Order IX of CPC is an illegality and committed an error. Therefore, the order under challenge is liable to be set aside.

In the result, the order dated 04.12.2012 in I.A. No.156 of 2012 in O.S. No.62 of 2003 passed by the V Additional Senior Civil Judge, Guntur, is set aside while remanding the matter to the trial court to decide the petition afresh after affording reasonable opportunity to both parties. After disposal of the petition, if there is

any necessity to examine the petition under Rule 13 of Order IX of CPC to set aside the *ex parte* decree, the court may consider and pass appropriate orders after affording reasonable opportunity. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in the civil revision petition shall stand closed.

M.SATYANARAYANA MURTHY,J

Date:27.06.2017
BV

