

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CIVIL REVISION PETITION Nos.2114, 1241 & 1748 of 2017

COMMON ORDER:

These three Civil Revision Petitions can be disposed of by a common order for the reason that they arise out of the same *lis* pending between the parties.

2. The present revisions i.e., C.R.P.Nos.2114, 1241 and 1748 of 2017 are preferred by the defendants aggrieved by the common order dated 21.12.2016, passed in I.A.No.307 of 2015, I.A.No.838 of 2016 and I.A.No.308 of 2015, respectively.

3. While the petitioners in these Civil Revision Petitions are the defendants, the sole respondent herein is the plaintiff in O.S.No.3 of 2011 on the file of the III Additional District Judge-cum-Family Court, Srikakulam, Srikakulam District. For the sake of convenience, the parties are referred to as they were arrayed in the suit in O.S.No.3 of 2011 before the Court below.

4. The plaintiff filed suit in O.S.No.3 of 2011 for recovery of a sum of Rs.16,29,836/- on the basis of a Promissory Note. That suit came to be decreed *exparte* on 07.06.2012. Thereafter, the defendants preferred I.A.No.335 of 2014 under O.IX R.13 of C.P.C., seeking to set aside the *exparte* decree dated 07.06.2012, and also I.A.No.78 of 2014 under Section 5 of the Limitation Act to condone the delay of 399 days in representing the application in I.A.No.335 of 2014. The application in

I.A.No.78 of 2014 was allowed on terms. Having allowed I.A.No.78 of 2014, the Court below took up the enquiry in I.A.No.335 of 2014. Pending enquiry in I.A.No.335 of 2014, the plaintiff filed I.A.Nos.307 and 308 of 2015 seeking to re-open and for recall of P.W.1, respectively. However, on 01.12.2015 the Court below allowed the application in I.A.No.335 of 2014 exparte, setting aside the exparte decree dated 07.06.2012, without cross-examining P.W.1 and without hearing the plaintiff. Thereafter, the plaintiff filed an application (G.R.No.512 of 2016) in I.A.No.335 of 2014 in O.S.No.3 of 2011 seeking to set aside the exparte order dated 01.12.2015 passed in I.A.No.335 of 2014. Since the Court below did not register the said application, the plaintiff preferred C.R.P.No.1575 of 2016 and this Court, by order dated 02.06.2016, disposed of the said revision directing the Court below to register the un-numbered I.A. i.e., G.R.No.512 of 2016 and dispose of the same on merits. In pursuance of the said order dated 02.06.2016, the Court below registered the said application as I.A.No.838 of 2016 and subsequently, disposed of the said applications i.e., I.A.Nos.307 and 308 of 2015 and I.A.No.838 of 2016, by a common order dated 21.12.2016, permitting the plaintiff to cross-examine P.W.1 in I.A.No.335 of 2014. Aggrieved by the same, the present Civil Revision Petitions are preferred by the defendants.

5. Having heard learned counsel, this Court is at a loss to understand what prejudice is caused to the

petitioners/defendants with the impugned common order dated 21.12.2016 passed by the Court below. The defendants obtained favourable ex parte order dated 01.12.2015 in I.A.No.335 of 2014, setting aside the ex parte decree passed against him dated 07.06.2012 in O.S.No.3 of 2011, and the plaintiff wanted to set aside that ex parte order, enquiry in the application was taken up and the 1st defendant was examined as P.W.1, but was not cross-examined by the plaintiff and the I.A. filed by the defendants was allowed ex parte. When the Court has allowed the application filed by the plaintiff to set aside the order and to afford him an opportunity to cross-examine P.W.1/defendant No.1 and advance arguments, these revisions are filed.

6. The application being I.A.No.335 of 2014 filed by the petitioners/defendants under O.IX R.13 C.P.C., needs to be disposed of by affording an opportunity of hearing to both the parties after adducing evidence in their favour, and accordingly, if P.W.1 was allowed to be cross-examined, it cannot be said to be in any way prejudicial to the interest of the petitioners/defendants. In the applications filed by the plaintiff, valid and satisfactory reasons are mentioned in support of his request. The petitioners/defendants have filed these three revision petitions obviously with an oblique motive and with an intention of protracting the litigation, which is for recovery of money pending for more than six years. Therefore, these Civil

Revision Petitions are liable to be dismissed with exemplary costs.

7. Accordingly, these three Civil Revision Petitions are dismissed with costs of Rs.5,000/- (Rupees five thousand only) each of which shall be paid to the respondent/plaintiff by the petitioners/defendants within a period of two months from today.

8. As a sequel, miscellaneous petitions pending, if any, in these Civil Revision Petitions shall stand closed.

16.06.2017.
Msr



M.S.K. JAISWAL, J

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CIVIL REVISION PETITION Nos.2114, 1241 & 1748 of 2017



16.06.2017
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