

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CIVIL REVISION PETITION No.443 of 2017

ORDER:

This Civil Revision Petition is filed by the petitioner-plaintiff, under Article 227 of the Constitution of India, aggrieved by the order, dated 08.12.2016, passed in I.A.No.3 of 2016 in O.S.No.06 of 2011, on the file of the Sub-Divisional Magistrate, Mobile Court, Rampachodavaram, East Godavari District.

2. Heard and perused the entire material available on record.

3. The petitioner-plaintiff filed I.A.No.3 of 2016 in O.S.No.06 of 2011 before the Sub-Divisional Magistrate, Mobile Court, Rampachodavaram, East Godavari District, under Rule 27(3) of the A.P. Agency Rules, 1924, seeking to set aside the *ex parte* decree, passed by the learned Magistrate in O.S.No.06 of 2011, on 18.02.2016, stating that the case was decided in the absence of himself and his counsel and the orders were served on his counsel on 26.09.2016, whereby the learned Magistrate disposed of the said I.A. by observing as follows:

“Keeping in view of the findings, it has come to a conclusion that this Court, not satisfied with the cause for the absence to the date of adjournment date 18-02-2016, by the present Petitioner/Plaintiff & Defendant in O.S. and inclined that the set aside petition, filed with an intention to prolong the issue further, without producing recorded evidence and hence, the prayer of the Petitioner/Plaintiff is not considerable. Accordingly the I.A. is disposed off with no costs.

Howsoever, the Petitioner/Plaintiff is having liberty to file a fresh Suit.”

4. Learned counsel for the petitioner contended that the trial Court has given untenable and unreasonable findings in its order, which are liable to be set aside.

5. Considering the facts and circumstances of the case, the absence of the petitioner-plaintiff for one hearing cannot be a ground to dismiss the I.A.No.3 of 2016 in O.S.No.06 of 2011 seeking to set aside the *ex parte* decree, passed by the trial Court in O.S.No.06 of 2011, on 18.02.2016. Hence, this Court is of the view that the matter can be remanded to the trial Court to pass an appropriate order after hearing both sides.

6. Accordingly, the Civil Revision Petition is allowed by setting aside the order, dated 08.12.2016, in I.A.No.3 of 2016 in O.S.No.06 of 2011, on the file of the Sub-Divisional Magistrate, Mobile Court, Rampachodavaram, East Godavari District, and the matter is remanded to the trial Court for fresh adjudication. The learned trial Judge is directed to pass an appropriate order after hearing both sides, within a period of three (3) months from the date of receipt of a copy of this order and both the parties are directed to be present before the trial Court as and when directed by the trial Court and to place their arguments for final disposal. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in the civil revision petition shall stand closed.

RAJA ELANGO,J

Date: 6th April, 2017

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