

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CIVIL REVISION PETITION No.2194 OF 2017

ORDER:

Vide the present petition, the petitioner has challenged the order dated 27.03.2017 passed in IA No.1523 of 2015 in O.S No.325 of 2015 on the file of Principal Senior Civil Judge, Guntur.

2. Heard the learned counsel for the petitioner.

3. Learned counsel appearing on behalf of the petitioner/defendant submits that the learned judge while passing the impugned orders has committed error in imposing the onerous conditions of depositing 1/4th of the decretal amount on or before 17.04.2017, while allowing the application to set aside the ~~ex~~ parte decree. He further submits before passing the impugned order, the learned judge ought to have seen that the respondent/plaintiff filed a false suit for eviction against the appellant.

4. Learned counsel submits that a similar issue came before this Court in a case of **Shaik Ahmed Mohammad vs. Damodardas Haridas and sons**¹, whereby this Court held that such conditions imposed are onerous or unjustifiable and accordingly, set aside the conditions of imposition of depositing 1/4th of decretal amount.

¹ 2009 LawSuit (AP) 498

5. First of all, I deal with the judgment cited by the learned counsel for the petitioner (**supra 1**). In the first sentence of para-20 itself, it is recorded that no doubt that no hard and fast rule has been laid down in such cases, however, depending upon the facts and circumstances of a particular given case and while allowing an application to set aside the ex parte decree certain conditions would be imposed.

6. In the present case, the decretal amount of Rs.6,00,000/- towards arrears, Rs.10,000/- towards damages and Rs.17,192/- towards costs have been imposed by the Court below. The suit vide O.S.No.325 of 2015 was filed on 19.02.2015. The petitioner/defendant opposed the aforesaid suit and sufficient time was given to him for filing the written statement. However, he failed to file the same.

7. It is not in dispute that the petitioner/defendant had no knowledge about the proceedings in O.S.No.325 of 2015. No reasons were given as to why he has not filed the written statement. The ground taken in the said I.A. was that the petitioner/defendant was suffering with fever and back-ache. The fever cannot be permanent that may be for a week, ten days or maximum two weeks. As per the certificate produced by the petitioner/defendant, back-ache ailment is not mentioned as it is acute one. He was not admitted in the hospital and not taken treatment as in-patient. The age of

the petitioner is about 38 years as noted by the trial Court. Thus, the petitioner/defendant could not assign any reason before the Court below or before this Court why he could not file the written statement, despite opportunities.

8. In view of the facts recorded above, I find no illegality or perversity in the impugned order dated 27.03.2017.

9. Finding no merit in the instant petition and the same is accordingly dismissed. There shall be no order as to costs.

10. The trial Court was directed the petitioner to deposit 1/4th of decretal amount on or before 17.04.2017. However, till date, the said amount has not been deposited by the petitioner/defendant.

11. At this stage, the learned counsel appearing on behalf of the petitioner submits that the time may be extended to deposit 1/4th of the decretal amount as directed by the trial court.

12. Time is extended up to 17.06.2017, as prayed by the learned counsel for the petitioner, subject to payment of interest @ 12% p.a. from 17.04.2017 to 17.06.2017.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE SURESH KUMAR KAIT.

Date :28-04-2017
Gvl