

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.296 OF 2016

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908, is filed by the petitioner/defendant assailing the order, dated 27.11.2015, of the learned V Junior Civil Judge, passed in I.A.No.202 of 2015 in O.S.No.383 of 2015 on the file of the XXI Junior Civil Court, City Civil Court, Hyderabad.

2. I have heard the submissions of *Sri S.S.R.Murthy*, the learned counsel for the petitioner/defendant, and of *Sri Thota Ravindra*, learned counsel for the respondent/plaintiff. I have perused the material record.

3. From the facts pleaded and submissions made, the following facts are discernable: 'The suit was decreed *ex parte*, on 24.04.2015. The defendant filed the afore-stated interlocutory application seeking to set aside the *ex parte* decree on the ground that after receipt of the suit summonses, the same were misplaced and, therefore, he could not enter appearance. The plaintiff by filing a counter resisted the application. The trial court dismissed the application of the defendant and refused to set aside the *ex parte* decree having observed in the orders impugned that the proceedings of the suit are being placed on the web site of the Court and, therefore, it is not difficult for the defendant to know the dates of the Court proceedings even though he might have lost the served summons due to misplacement. Aggrieved thereof, the defendant is before this Court.'

4. Learned counsel for the petitioner/defendant would submit as follows: 'A valid explanation is offered and sufficient cause is shown for setting aside the *ex parte* decree. Therefore, the trial court ought to

have set aside the *ex parte* decree by considering the request of the petitioner/defendant. The defendant is prepared to deposit the entire arrears of rent without prejudice to the rights and contentions of both the parties in the suit. It is in the interests of justice to set aside the *ex parte* decree and give an opportunity to the defendant to contest the suit for eviction on merits.'

5. Learned counsel for the respondent/plaintiff, while supporting the orders of the Court below, would submit that, as on today, the arrear of rent is Rs.4,05,000/- from January, 2014 onwards.

6. Having regard to the facts and circumstances and as the suit is filed for eviction, this Court finds that giving an opportunity to the defendant to have the cause decided on merits, sub-serves the ends of justice. Further, this Court is satisfied that sufficient cause is shown for setting aside the *ex parte* decree and that, therefore, the order impugned brooks interference, in the facts and circumstances of the case.

7. In the result, the Civil Revision Petition is allowed and the order, dated 27.11.2015, of the learned V Junior Civil Judge, City Civil Court, Hyderabad, passed in I.A.No.202 of 2015 in O.S.No.383 of 2015 on the file of the XXI Junior Civil Court, City Civil Court, Hyderabad, is set aside and as a sequel, the said interlocutory application is allowed subject to the condition that the defendant shall deposit the entire admitted arrears of rent within eight (8) weeks from today. It is needless to mention that failing compliance of the said condition, the application filed for setting aside the *ex parte* decree shall stand dismissed and the order impugned in the revision shall stand revived. On compliance of the condition as directed in these orders, the trial

Court shall, as expeditiously as possible, take up the suit for trial and disposal in strict accordance with the procedure established by law.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE M.SEETHARAMA MURTI

September 12, 2017
Note: Issue CC by 09.10.2017.
[B/ o]
Lmv

