

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**CIVIL REVISION PETITION No.58 of 2016****ORDER:**

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioners assailing the Order dt.23.11.2015 in I.A.No.34 of 2014 in O.S.No.63 of 2008 passed by XI Additional District Judge, Kakinada, allowing an application filed under Order 9 Rule 13 CPC to set aside the *ex parte* decree passed against the respondents therein.

The case of the respondents herein is that no notices were served on them, but on receipt of a Letter along with paper advertisement, they came to know about the passing of *ex parte* decree through their paternal uncle and later they filed a petition under Order 9 Rule 13 CPC to set aside the *ex parte* decree.

The petitioner herein opposed the petition on the ground that after 20 months, the petition under Order 9 Rule 13 CPC is not maintainable without application under Section 5 of Limitation Act and besides raising other ground also.

But, curiously, the trial Court framed only one point for consideration, which is as follows:

“ the point that arise for determination in this petition is whether this petition is not maintainable in the absence of any petition under Section 5 of

Limitation Act to condone the delay in filing the petition under Order 9 Rule 13 CPC”?

But, at the end of discussion at para No.22, the trial Court held that a petition under Order 9 Rule 13 CPC without application under Section Order 5 of Limitation Act is not maintainable, ultimately in para No.23 allowed the petition by setting aside the *ex parte* decree.

The entire discussion in the Order is about maintainability of an application under Order 9 Rule 13 CPC without any application under Section 5 of Limitation Act and recorded its finding, but no reason was recorded for allowing the application filed under Order 9 Rule 13 CPC. The requirements under Order 9 Rule 13 CPC are totally different and in the absence of any finding allowing an application under Order 9 Rule 13 CPC and setting aside the *ex parte* decree is erroneous.

The trial Court ought to have framed appropriate point for consideration regarding maintainability of application under Order 9 Rule 13 CPC not accompanied by any application under Section 5 of Limitation Act and whether the summons were not duly served or that the petitioner was prevented by any sufficient cause from appearing when the suit was called for hearing. But, the trial Court recorded a finding that summons were not served, since service of summons by substitute service under Order 5 Rule 20 (2) CPC was held sufficient, set the petitioner *ex parte*. But, the discussion in

the entire order is silent whether the petitioner was prevented by any cause much less sufficient cause, if service of summons by substitute service is sufficient.

In the absence of such reasons, allowing an application setting aside the *ex parte* decree is erroneous. Therefore, the Order under challenge is hereby set aside remanding the petition to the trial Court to frame appropriate point for consideration and decide the same in accordance with law within a period of two months from the date of receipt of a copy of this Order, after affording an opportunity to both the parties .

With the above discussion, this Civil Revision Petition is disposed without costs.

As a sequel to it, miscellaneous petitions, if any pending in this appeal, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 10.07.2017

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Dt. 10.07.2017

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