

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

C.R.P.1966 OF 2017

ORDER

Heard learned counsel appearing for the petitioner and learned counsel appearing for the respondent.

This Civil Revision Petition is directed against the order dated 13.03.2017 passed in I.A.No.989 of 2016 in O.S.No.89 of 2015 by the Senior Civil Judge, Darsi.

The revision petitioner is the defendant and the respondent is the plaintiff.

Respondent-plaintiff filed O.S.No.89 of 2015 for recovery of certain amount and an *ex parte* decree was passed against the petitioner-defendant. The petitioner-defendant filed I.A.No.989 of 2016 seeking stay of further proceedings in E.P.No.27 of 2016 in O.S.No.89 of 2015, since he filed application to set aside the *ex parte* decree passed on 17.2.2016.

A counter-affidavit was filed stating that the petitioner-defendant borrowed an amount of Rs.6,50,000/- from the respondent-plaintiff on 15.6.2012 agreeing to repay the same with interest at 24% per annum and though the defendant received the suit summons, he failed to appear in the suit.

The trial Court vide order dated 13.03.2017 allowed the application on condition of the petitioner depositing half of the decretal amount to a tune of Rs.5,59,000/- within four weeks.

It appears that an application seeking condonation of delay in filing the petition was allowed. At the stage of consideration of the application for setting aside the *ex parte* decree, the present application is filed.

Since the application to set aside the *ex parte* decree is pending, the trial Court should have granted stay unconditionally subject to the orders to be passed in the application filed under Order 9 Rule 13 CPC.

As the Court below imposed a condition on payment of half of the decretal amount, the order to the extent of imposing the condition is set aside and the trial Court is directed to consider the application of the petitioner filed under Order 9 Rule 13 CPC in accordance with law and dispose of the same.

Accordingly, the Civil Revision Petition is disposed of. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

15th September, 2017
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