

HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

CIVIL REVISION PETITION No.2102 OF 2017

JUDGMENT:

This Civil Revision Petition is arising out of the Order and Decree dated 18.11.2016 passed in I.A.No.92 of 2016 in O.S.267 of 2010 by the Senior Civil Judge, Parvathipuram Camp Court, at Vizianagaram (for short, 'the trial Court').

2. The plaintiff filed suit O.S.No.267 of 2010 for recovery of amount from the defendants 1 and 2. The defendants have remained ex parte before the trial Court during trial and the trial Court passed ex parte order. The defendants have filed I.A.No.92 of 2016 under Order IX Rule 13, and Section 151 of Code of Civil Procedure, to set aside the ex parte decree passed against them on 29.10.2014 and to permit them to adduce evidence on their side. The trial Court has observed that as per the Docket Order, the evidence-in-chief of PW1 was filed on 18.04.2013 and since then it was coming for cross-examination of PW1, and the defendants successfully dragged on the matter in the regular Court for years together. It is further observed that in the meantime the matter was transferred to Camp Court and re-transferred to regular Court and again transferred to the trial Court as per the proceedings of the District Judge, Vizianagaram dated 20.06.2014 and it was adjourned to 08.08.2014 and since then it is coming for cross-examination. It is further observed that the defendants did not appear either before the regular Court or before the trial Court and they did not explain any reason for their non-appearance during the said period and they simply mentioned that

they have no knowledge about transfer of the case to the trial Court and that one of the defendants was held up in Chennai on business work and that the defendants did not appear before the trial Court on 29.10.2014. The trial Court had set them ex parte.

3. Learned counsel for the revision petitioners-defendants placed reliance on the decision of the Hon'ble Supreme Court in V.K. Industries v. M.P. Electricity Board, Rampur, Jabalpur¹. In the said decision, it was held that the Court has power to impose any condition of deposit of costs or decretal amount or even ask the defendants to give security for the suit amount, but those conditions should be reasonable and should not be harsh and excessive.

4. According to the findings of the trial Court, the petitioner did not explain sufficient reason for his non-appearance. As a matter of fact, the observations of the trial Court clearly reveal that the case has been transferred several times from one Court to another Court by the District Judge, Vizianagaram, vide his order dated 20.06.2014. Thereafter, it was adjourned to 08.08.2014 and since then it was coming for cross-examination.

5. It is clearly seen from the observations of the trial Court that due to transferring of the case from one Court to another Court, the defendants might not have had knowledge about the transfer of their case. It is also pertinent to note that one of the defendants was held up in Chennai on business work and as such they could not attend the Court on 29.10.2014 on which day they were set ex parte. As a

¹ (2002) 3 SCC 159

matter of fact, the trial Court has allowed the petition but directed the defendants to deposit half of the suit claim. The observations of the trial Court would clearly reveal that due to transfer of the case from one Court to another Court, the defendants could not prosecute their case and the other reasons stated by them was that one of the defendants was held up in Chennai on business work. Therefore, directing the defendants to deposit half of the suit amount is nothing but penalising the defendants. However, in the facts and circumstances of the case, learned counsel for the revision petitioners-defendants submits that the defendants have no objection to deposit 1/4th of the suit amount in the Court for setting aside the ex parte orders passed against them.

6. It is pertinent to note that the grievance of the defendants is limited to the extent of setting aside the ex parte order, on deposit of 1/4th amount. In the interest of justice, I deem it appropriate to dispose of the revision petition at the admission stage. Therefore, no notice is ordered to the respondents in this revision petition.

7. In the result, the civil revision petition is disposed of at the stage of admission, directing the revision petitioners-defendants to deposit 1/4th of the suit amount within a period of one month from the date of receipt of a copy of this order. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

Date: 21.04.2017
ssp