

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 248 OF 2017

ORDER :

The docket order dated 02.01.2017 in I.A. No. 1177 of 2016 insofar as it directed the petitioner / defendant to deposit one-fourth of the suit amount on or before 18.01.2017, was under challenge in this Revision.

The petitioner herein is the defendant in O.S. No. 13 of 2016 filed before the Senior Civil Judge's Court at Kavali seeking recovery of Rs.8,36,000/- on the basis of a promissory note. The petitioner was set *ex parte* in the suit on 15.06.2016. Seeking to set aside the *ex parte* order, the petitioner filed I.A. No. 1177 of 2016 which was allowed by the impugned order dated 02.01.2017. While allowing the said Application, the learned Senior Civil Judge put the petitioner / defendant on terms. Hence, the petitioner is before this Court to that limited extent.

Learned counsel for the petitioner submits that the impugned order is contrary to the judgment rendered by the Supreme Court in ***Vijay Kumar Madan v. R.N. Gupta Technical Education Society***¹.

Having considered the submission of the learned counsel for the petitioner, it is seen that the Hon'ble Supreme Court in the judgment referred to supra, in paragraph 8, held as under:

“ Costs should be so assessed as would reasonably compensate the plaintiff for the loss of time and inconvenience caused by relegating back the proceedings to an earlier stage. The terms which the Court may direct may take care of the time or mode

¹ AIR 2002 Supreme Court 2082

of proceedings required to be taken pursuant to the order under Rule 7. For example, keeping in view the conduct of the defendant-applicant, the Court may direct that though the ex-parte proceedings are being set aside, the defendant must file the written statement within an appointed time or recall for cross-examination at his own cost and expenses the witnesses examined in his absence or that the defendant shall be allowed not more than one opportunity of adducing his evidence and so on. How the terms are to be devised and made a part of the order would depend on the facts and circumstances of a given case. In short, the Court cannot exercise its power to put the defendant/applicant on such terms as may have the effect of pre-judging the controversy involved in the suit and virtually decreeing the suit though ex-parte order has been set aside or to put the parties on such terms as may be too onerous.....”

In the light of the law declared by the Supreme Court, this Court does not consider it necessary to issue notice to the respondent-plaintiff.

The Civil Revision Petition is therefore, allowed setting aside the order dated 02.01.2017 to the extent of imposing the condition on the petitioner / defendant to deposit one-fourth of the suit amount. No costs.

Consequently, the miscellaneous Applications, if any shall stand disposed of.

CHALLA KODANDA RAM, J

24th January 2017

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