

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.3887 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful respondent/plaintiff, is directed against the order, dated 04.07.2017, of the learned I Senior Civil Judge, City Civil Court, Hyderabad, passed in I.A.No.435 of 2017 in O.S.No.934 of 2016.

2. At the stage of admission, I have heard the submissions of Sri J.Rajeshwar, learned counsel for the petitioner/plaintiff. I have perused the material record.

3. The facts of the case, which are required to be stated as a prelude to this order, in brief, are as follows:-

The Revision petitioner/plaintiff (hereinafter, 'plaintiff') brought the afore-stated suit against the respondent/defendant (hereinafter, 'defendant') for recovery of money. The defendant, having entered appearance, failed to file written statement. Therefore, he was set *ex parte* in February, 2017. Thereafter, he filed the afore-stated interlocutory application, on 12.04.2017, under Order IX Rule 7 read with Section 151 of the Code of Civil Procedure, 1908, requesting to set aside the *ex parte* order and receive the written statement on file. The said petition was resisted by the plaintiff. However, by the order impugned, the trial Court allowed the said petition subject to payment of costs. Aggrieved thereof, the plaintiff is before the Court.

4. The learned counsel for the plaintiff would submit as follows:-
'In the affidavit filed in support of the petition filed to set aside the *ex*

parte order, the defendant merely stated that the brother-in-law of his counsel fell sick and that his counsel is the only person to take care of his brother-in-law and that after prolonged treatment, the brother-in-law of his counsel died and therefore, on account of the said facts, the written statement could not be filed within the time allowed under law. The plaintiff filed a counter forcefully contending that the explanation offered is not sufficient to set aside the *ex parte* order, as neither the counsel nor the defendant were not in a position to file the written statement. The explanation offered cannot be considered as a valid ground for setting aside the *ex parte* order. The trial Court erroneously allowed the petition of the defendant and set the *ex parte* order aside on unsustainable grounds.'

5. I have bestowed my attention to the facts and submissions.

6. It is to be noted that the defendant, having entered appearance, remained *ex parte*, on 22.02.2017. Thereafter, that is, in April 2017, he filed the petition to set aside the *ex parte* order offering an explanation, which is stated supra. In the well considered view of this Court, when the matter is before the trial Court, it is always in the interest of justice to set aside the *ex parte* order by taking a lenient view and allow the cause to be decided on merits instead of leaving it to be decided *ex parte*. Such a course, in the well considered view of this Court, sub-serves the ends of justice. In the considered view of this Court, the explanation that due to the ill-health of the brother-in-law of the counsel who is looking after him and the eventual death of the brother-in-law of the counsel, the counsel could not spare time to take instructions for drafting the written statement of the defendant and therefore, the written

statement could not be filed, can be accepted as a valid explanation as it is well settled that a party cannot be penalised for the fault of his counsel.

7. On the above analysis, this Court finds that there is no merit in the Revision and that the order impugned does not warrant interference.

8. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

09th August, 2017
Bvv



M.Seetharama Murthi, J