

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

CIVIL REVISION PETITION NO.759 OF 2018

DATED:16-02-2018

Between:

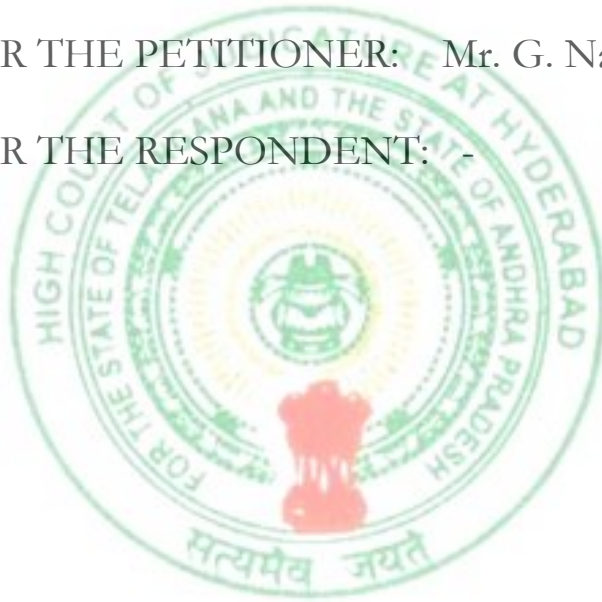
Bobbili Appala Naidu ... Petitioner

And

Karubhukta Nagabushanam Rao ... Respondent

COUNSEL FOR THE PETITIONER: Mr. G. Nagesh

COUNSEL FOR THE RESPONDENT: -



THE COURT MADE THE FOLLOWING:

ORDER:

This civil revision petition arises out of order dt.11.12.2017 in I.A. No.1763 of 2016 in O.S. No.144 of 2015 on the file of the VII Additional Senior Civil Judge, Visakhapatnam.

2. I have heard Mr. G. Nagesh, learned counsel for the petitioner, and perused the record.

3. The respondent filed the aforementioned suit for recovery of a sum of Rs.27,45,268/- with interest thereon, based on a mortgage.

The petitioner remained *ex parte* and an *ex parte* preliminary decree with costs was passed on 05.3.2016. The petitioner filed an application for setting aside the *ex parte* decree. As there is a delay of 146 days in filing the said application, he has also filed I.A. No.1763 of 2016 for condonation of the delay. He has pleaded in his application that he did not receive any summons in the suit, that recently after receiving a notice from the respondent on 01.7.2016 he came to know about the factum of filing of the suit, that immediately he gave reply notice dt.01.8.2017 requesting the respondent to furnish the details of the suit and that after waiting for some time and on enquiries, the petitioner came to know that the preliminary decree was passed on 05.3.2016.

4. The respondent filed a counter affidavit wherein he has stated that before the suit was filed, he has got a legal notice issued on 20.08.2014 to the petitioner and the same was received by him under

Ex.A.3 – acknowledgement. That though the suit notices were sent to the same address to which the legal notice dt.20.08.2014 was sent, the same were returned as un-served, that therefore the Court below ordered substituted service and in spite of such service the petitioner did not appear before the Court and hence he was set *ex parte* on 24.6.2015 and that more than six months later the decree was passed. The Court below accepting the plea of the respondent, however, set aside the *ex parte* decree to give the petitioner a chance to contest the suit on merits, but, stipulated the condition that he shall pay the suit costs by 26.12.2017.

5. The learned counsel for the petitioner submitted that under Section 35A of the Code of Civil Procedure, 1908 (CPC), the suit costs shall not exceed Rs.3,000/- or limit of its pecuniary jurisdiction, which ever is less. Section 35-A of CPC deals with compensatory costs in respect of false or vexatious claims or defences. The relevant provision for the purpose of the present case is Section 35 of CPC which does not envisage maximum limit but leaves the quantum of costs to be imposed to the discretion of the Court.

6. In the instant case, the Court below has not imposed the costs arbitrarily. Since a preliminary decree was passed with costs, the same was set aside subject to the petitioner paying the suit costs. Therefore, I am not able to accept the submission of the learned counsel for the petitioner that the quantum of costs imposed by the Court below is

arbitrary. Accordingly, I do not find any merit in this civil revision petition. However, I am of the opinion that the payment of suit costs to the respondent may cause prejudice to the interests of the petitioner in the event of his success in the suit. Therefore, the order of the Court below is modified to the extent that the petitioner is permitted to deposit the costs within four weeks from today, but the same shall be kept in interest yielding fixed deposit initially for a period of six months and renewable from time to time till the disposal of the suit. Whoever succeeds in the suit shall be entitled to receive the said amount.

7. Subject to the above modification, the civil revision petition is dismissed.

As a sequel to dismissal of the civil revision petition, I.A. No.1 of 2018 shall stand disposed of as infructuous.

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C.V. NAGARJUNA REDDY, J

16-02-2018

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