THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.965 of 2018

ORDER:

This revision petition is filed under Article 227 of the Constitution of India assailing the orders dated 08.01.2018 passed in I.A.No.306 of 2017 in O.S.No.113 of 2015 on the file of I Additional Junior Civil Judge Court, Bhimavaram.

2. Heard the learned counsel appearing for both the parties and perused the material on record.

3. Learned counsel for the petitioner strenuously submitted that the trial Court without applying its mind to the facts of the case, dismissed the petition on untenable and erroneous grounds. He further submitted that the Court ought not to have dismiss the petition on technicalities at the cost of substantial justice. Per contra, learned counsel for the respondent vehemently submitted that the trial Court has considered the conduct of the petitioner and dismissed the petition. He further submitted that this Court shall not lightly interfere with the impugned order while exercising the jurisdiction under Article 227 of the Constitution of India.

4. The point that arises for consideration is:

"Whether there is any illegality, irregularity or impropriety in the impugned order?"

5. A perusal of the record reveals that the petitioner filed O.S.No.113 of 2015 on the file of I Additional Junior Civil Judge

Court, Bhimavaram, against the respondent seeking maintenance of Rs.10,000/- per month and also to create charge over the plaint schedule property. After completion of respondent/plaintiff's side evidence, the trial Court posted the matter for petitioner/defendant's side evidence. For one reason or the other, the petitioner did not choose to adduce evidence for a period of nearly eight months. The trial Court, having no other alternative, set the petitioner *ex parte* and posted the matter for arguments. After completion of the arguments of the respondent, the trial Court posted the matter for arguments of the petitioner. At that stage, the petitioner filed the present petition.

6. The fact remains the petitioner did not produce the witnesses in spite of opportunity given to him by the trial Court. If the petition is dismissed, it may not be possible for the petitioner to ventilate his legitimate and legal grievances. If the petition is allowed unconditionally, the possibility of dragging the matter by the petitioner cannot be ruled out completely. In this type of matters, the Court has to strike balance between the parties. The trial Court has not considered the prejudice likely to be caused to the petitioner and dismissed the petition. Due to the attitude of the petitioner, the respondent was forced to approach this Court and engage a counsel. The respondent might have spent some amount towards legal expenses.

7. Taking into consideration the facts and circumstances of the case, this Court is of a considered view that it is a fit case to

allow the revision petition, but by imposing costs on the petitioner.

8. Accordingly, the Civil Revision Petition is allowed setting aside the orders passed by the trial Court in I.A.No.306 of 2017 and the suit is reopened on a condition of petitioner paying an amount of Rs.15,000/- to the respondent towards costs. It is submitted that the petitioner has already paid an amount of Rs.5,000/- to the respondent. Therefore, the petitioner has to pay an amount of Rs.10,000/- to the respondent. If the petitioner fails to pay costs of Rs.10,000/-, the petition stands dismissed automatically. The trial Court is hereby directed to dispose of the suit within two (2) months from the date of receipt of copy of the order. If the petitioner fails to complete the evidence within the time stipulated by the trial Court, the trial Court is at liberty to proceed with the suit in accordance with law. There is no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Dt:05.12.2018
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