

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.M.A.No.1028 of 2013

JUDGMENT:

This appeal is filed under Order 43 Rule 1 CPC challenging the orders dated 18.07.2011 passed in I.A.No.194 of 2009 in O.S.No.169 of 2006 on the file of the Court of III Additional Sessions Judge (Fast Track Court), Bhimavaram.

2. Heard the learned counsels appearing for both parties.

3. A perusal of the record reveals that the petitioner herein filed O.S.No.169 of 2006 against the respondent for recovery of an amount of Rs.6,13,066/- basing on the promissory note dated 10.01.2004 alleged to have been executed by the respondent. When the matter is coming up for plaintiff's side evidence, the plaintiff did not appear before the trial Court. Having no other alternative, the trial Court dismissed the suit for default. The petitioner filed I.A.No.194 of 2009 under Order 9 Rule 9 CPC to set aside the default order. The respondent filed counter opposing the claim of the petitioner. The trial Court dismissed the petition after affording a reasonable opportunity to both parties. Hence, the revision.

4. A perusal of the record reveals that as per the averments made in the affidavit filed before the trial Court, the petitioner could not attend the Court due to viral fever. As pointed out by the respondent's counsel, the petitioner did

not file any document to substantiate the same. On 07.10.2009, there was no representation on behalf of the petitioner. Hence, the trial Court dismissed the petition. While deciding the petitions of this nature, the approach of the Court shall be pragmatic and not pedantic. If the petition is dismissed, it may not be possible for the petitioner to ventilate his legitimate and legal grievances. Even if the suit is restored, the same would not cause any prejudice to the respondent. The trial Court dismissed the suit on the sole ground that the petitioner failed to appear on single day. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that it is a fit case to allow the petition by imposing some costs.

5. Having regard to the facts and circumstances of the case, the C.M.A. is allowed setting aside the orders dated 18.07.2011 in I.A.No.194 of 2009 in O.S.No.169 of 2006 on the file of the Court of III Additional Sessions Judge (Fast Track Court), Bhimavaram. Consequently, I.A.No.194 of 2009 in O.S.No.169 of 2006 is allowed on a condition of petitioner paying an amount of Rs.3,500/-(Rupees three thousand five hundred only) to the respondent. The trial Court is hereby directed to restore the suit only after payment of costs by the petitioner. The trial Court is further directed to dispose of the suit as expeditiously as possible, preferably, within six (6) months from the date of restoration of the suit.

As a sequel, Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

12th July 2018,
Rns

