

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.647 OF 2016

ORDER:

This Civil Revision Petition is filed under Section 115 of C.P.C. assailing the order dated 08.12.2015 passed in I.A.No.216 of 2015 in O.S.No.133 of 2013 on the file of the Court of the Additional Senior Civil Judge at Machilipatnam.

2. In spite of service of notice, none appeared on behalf of the respondent. Hence, this Court is inclined to dispose of the revision petition on merits.

3. Learned counsel for the petitioner strenuously submitted that the trial Court while allowing the petition committed a grave error by directing the petitioner to deposit 1/4th of the decretal amount. He further submitted that the order passed by the trial Court is not sustainable either on facts or in law.

4. The facts leading to filing of the present revision petition are briefly as follows: The respondent herein filed O.S.No.133 of 2013 on the file of the Court of the Additional Senior Civil Judge, Machilipatnam, against the petitioner for recovery of an amount of Rs.6,05,666/-. After completion of the plaintiff's side evidence, the matter was posted for the evidence of defendant/petitioner. For one reason or other, the petitioner did not choose to appear before the trial Court. Having no other alternative, the trial Court decreed the suit on 09.02.2015 basing on the material available on record. After passing of the *ex parte* decree, in the month of March, 2015, the petitioner filed I.A.No.216 of 2015 in O.S.No.133 of 2013, under Order IX Rule 13 of C.P.C., to set aside the *ex parte* decree.

5. The trial Court, after considering the material available on record, allowed the petition on a condition of depositing 1/4th of the decretal amount by the petitioner. The petitioner is a Teacher by profession. A perusal of the record clearly reveals that the petitioner himself allowed the trial Court to pass the *ex parte* decree. It is not the case of the petitioner that the *ex parte* decree was passed without notice to him. While passing the orders in interlocutory applications of this nature, the Court has to strike balance between the parties. The affidavit filed by the petitioner does not disclose the reasons much less cogent and valid reasons for his non-appearance before the trial Court. If the decree dated 09.02.2015 is set aside without imposing any condition, the same may cause prejudice to the respondent/plaintiff. Even if the suit is decreed, it is very difficult for the respondent/plaintiff to recover the suit amount from the petitioner.

6. Taking into consideration the facts and circumstances of the case, this Court is of considered view that directing the petitioner herein to deposit 1/4th of the decretal amount, while allowing the petition, is not an onerous one. There is no illegality or irregularity in the order passed by the trial Court. There are no grounds much less valid grounds to interfere with the well considered order passed by the trial Court.

7. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 07.06.2018
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