

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CRP No.1954 of 2015

ORDER:

This Civil Revision Petition is filed questioning the order dated 27.04.2015 in IA No.216 of 2015 in OS No.163 of 2012 passed by the Special Sessions Judge for trial of cases under SCs and STs (Prevention of Atrocities) Act, 1989-cum-Additonal District Judge at Khammam.

The suit OS No.163 of 2012 is filed by the present respondent-bank before the lower Court. The loan that was granted by the respondent-bank was secured by a mortgage of immovable properties, which are mentioned in A-schedule of the suit schedule properties. After the suit was filed, the defendants were set *ex parte*. An *ex parte* order was passed.

Thereafter, two applications were filed. IA No.184 of 2015 was filed to condone the delay of 398 days in filing the application to set aside the *ex parte* decree. IA No.216 of 2015 was filed to set aside the *ex parte* decree dated 02.12.2013. IA No.184 of 2015 was allowed condoning the said delay on the condition that the suit costs have to be deposited. This order was passed on 27.04.2015. On the same day, the second application (IA No.216 of 2015) to set aside the *ex parte* decree allowed on the condition

that half of the decretal amount shall be deposited into the Court. Questioning this order to deposit the half of the decretal amount, the present revision is filed.

This Court has heard Sri Kowturu Vinaya Kumar, learned counsel for the revision petitioners/defendants and Sri V. Raghu, learned counsel for the respondent-bank/plaintiff.

The learned counsel for the revision petitioners submits that the conditions imposed by the lower Court are onerous. He points out that the decretal amount is Rs.22,02,085/- with costs and interest and that the deposit that is contemplated by the impugned order is more than Rs.11 lakhs. The learned counsel also submits that no such power is available to the Court under Order 9 Rule 13 CPC to impose such conditions, more so, such onerous conditions. He relied upon the decision of a learned single Judge of this Court in **S. Guru Murthy v. R. Lakshmana Rao**¹ and held that once an *ex parte* decree is set aside in the eye of law there is no decree at all. Therefore, directing the deposit of part of the decretal amount does not arise.

The learned counsel for the revision petitioners also submits that the costs of Rs.44,286/- that were directed

¹ 2001 (6) ALT 655

to be deposited in the application filed to condone the delay, were already deposited into the Court. Therefore, it is his contention that the petitioners have been unduly burdened by being asked to deposit suit costs and also half of the decretal amount.

In reply to this, the learned counsel for the respondent bank argues that there is gross delay in filing of the application. In addition, he submits that the bank which has given the money towards educational loan is unable to recover the same and that the interest of the bank has also to be protected; that by merely depositing the money, no loss is caused to the present petitioners as the respondent-bank is a nationalized bank. Therefore, the learned counsel contends that there is no error apparent in the impugned order.

The point that arises for consideration is - whether the court could have imposed the conditions for deposit of half of the decretal amount as in the present case in addition to the costs?

According to both the learned counsel, the costs of Rs.44,286/- have already been deposited in the lower Court. In addition, a further deposit of half of the decretal amount of more than Rs.11,00,000/-, as directed to be made, is incorrect, as per the cited judgment in **S. Guru**

Murthy's case wherein it is held that once an *ex parte* decree is set aside, it means that there is no decree at all in the eye of law. Once there is no decree at all, the question of imposing the condition for deposit of half of the decretal amount does not arise, in the opinion of this Court.

In addition, this Court notices that Order 9 Rule 13 CPC does not provide for deposit for half of the decretal amount. The order provides for payment of costs and gives discretion for payment into the Court for otherwise. Similarly, Order IX Rule 7 CPC also deals with deposit of costs only. The Code does not provide for directing deposit of half the suit amount etc., at this stage. The costs that were directed to be deposited are also substantial. There is no risk of loss and injury to the respondent-bank because the loan is secured by a mortgage. Therefore, the submission that the decretal amount cannot be realized may not be correct in the facts and circumstances of the present case. In view of the above, this Court is of the opinion that the imposition of condition of depositing of the decretal amount is not as per law. Therefore, the order dated 27.04.2018 in IA No.216 of 2015 is set aside.

The learned counsel for the respondent bank submits that the costs are merely lying in the court. In that view of the matter, this Court is of the opinion that the respondent-bank is at liberty to withdraw the entire costs amount that is deposited without furnishing any security.

As the suit is of the year 2012, the lower Court is also directed to proceed with the trial of the suit and dispose of the same as early as possible, preferably within six months from the date of receipt of a copy of this order. The lower Court should also decide the case without being influenced by what is stated in this order.

With the above observations and directions, the Civil Revision Petition is allowed. In the circumstances of the case, there shall be no order as to costs. Miscellaneous Petitions, if any, pending in this revision, shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 20.11.2018

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