

**THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**

**C.M.A.No.846 of 2008**

**JUDGMENT:**

This appeal is filed under Order 43(1)(d) CPC assailing the order dated 26.06.2008 passed in I.A.No.670 of 2006 in O.S.No.119 of 2000 on the file of the Court of Additional Chief Judge –cum- Family Court, Secunderabad.

2. Heard the learned counsel appearing for both the parties.

3. A perusal of the record reveals that the first respondent filed O.S.No.119 of 2000 on the file of the Court of I Additional Chief Judge, City Civil Court, Secunderabad, against the petitioners and others for recovery of an amount of Rs.18,69,000/- with interest. The trial Court passed *ex parte* decree on 20.07.2006. The petitioners filed a petition under Order 9 Rule 13 CPC to set aside the *ex parte* order. The respondent filed counter opposing the claim of the petitioners. The trial Court, after affording a reasonable opportunity to both parties, dismissed the petition. Hence, this appeal.

4. The petitioners are defendant Nos.3 and 4 in the suit. A perusal of the record reveals that after filing the suit, notices were served on the petitioners herein. The petitioners are own brothers of second defendant, who is the Managing Partner of first defendant firm-M/s.Goli Eswaraiah. It is the

case of the petitioners that the second defendant assured that he will defend the suit on behalf of all the defendants. During pendency of the suit, the second defendant died. The legal representatives of second defendant came on record and contested the matter for some time. The record reveals that one C.K. Acharya, learned counsel filed vakalat on behalf of defendants 12, 13 and 14 on 06.09.2000. For non-filing of written statement, defendants 12, 13 and 14 were set *ex parte* on 26.04.2001. Defendants 10 and 17 were set *ex parte* on 22.02.2001. Sri K.V.L.Narasimharao, learned counsel filed a memo on 30.07.2001 offering vakalat for defendants No.1, 3 to 5, 7, 8 and 11. No vakalat was filed on behalf of these defendants. These defendants were set *ex parte* by the trial Court for non-filing of written statement. Defendant No.16 was set *ex parte* on 28.09.2001. Defendants 6 and 14 were set *ex parte* on 28.11.2001. A perusal of the record clearly reveals that most of the defendants having received the notices remained *ex parte*. That itself indicates that the defendants are not interested to prosecute the case. It is not the case of the petitioners that they have not received the summons. A perusal of the record also reveals that they engaged one counsel by name K.V.L.Narasimharao. For one reason or the other, the petitioners did not file their written statement and contested the suit.

5. I have carefully perused the affidavit filed by the petitioners in order to ascertain, whether the petitioners have assigned any reasons much less cogent and valid reasons. The petitioners have not assigned any reasons much less cogent and valid reasons for non-filing of the written statement opposing the claim of the plaintiff. The petitioners along with other defendants allowed the trial Court to pass *ex parte* decree. As observed earlier, the second defendant is the own brother of petitioners, who are defendant Nos.3 and 4. It is needless to say that while deciding the interlocutory applications of this nature, the approach of the Court shall be pragmatic and not pedantic. At the same time, the Court shall not lose sight of the conduct of the petitioners. If the material available on record reveals that the petitioners were intentionally and wilfully allowed the Court to pass *ex parte* decree and thereafter filed the petition, then the Court has to take reasonable care and caution while allowing the petition. If the decree was passed without notice to the defendants, then the Court has to take a lenient view in order to render justice to the parties.

6. In the instant case, the petitioners received the Court notices on 29.06.2001. From 29.06.2001 to till filing of the present petition on 21.08.2006, the petitioners have not taken any steps to defend the suit. The record reveals the carelessness on the part of the petitioners in defending the

suit. If this Court set aside the *ex parte* decree, certainly it would amount to granting of bonus to the petitioners, who are not diligent in contesting the suit by filing written statement within the statutory period. The possibility of filing of this type of applications, in order to deprive the decree-holders to enjoy the fruits of the decree, cannot be ruled out. The petitioners have not assigned reasons much less cogent and valid reasons to set aside the *ex parte* decree. The trial Court has considered all these aspects, in right perspective, and dismissed the petition. I am fully endorsing the findings recorded by the trial Court. There are no grounds, much less valid grounds to allow the appeal. The appeal lacks merits and bona fides and the same is liable to be dismissed.

7. In the result, C.M.A. is dismissed. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

**Dt:17.08.2018**  
Rns

**T.SUNIL CHOWDARY, J**