

1THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.M.A.No.310 of 2016

JUDGMENT:

This appeal is filed under Order 43 Rule 1 CPC assailing the orders dated 10.12.2015 passed in I.A.No.138 of 2015 in O.S.No.51 of 2014 on the file of XVI Additional District Court, Krishna, at Nandigama.

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

3. A perusal of the record reveals that the respondent filed O.S.No.51 of 2014 on the file of the XVI Additional District Court, Nandigama, against the petitioner for recovery of an amount of Rs.14,17,866/- with future interest basing on promissory notes. For one reason or the other, the petitioner could not file the written statement. Having no other alternative, the trial Court passed *ex parte* decree dated 23.01.2014.

4. The petitioner filed a petition under Order 9 rule 13 CPC to set aside the *ex parte* decree. The respondent filed counter *inter alia* contending that the petition is not maintainable under law. The trial Court after affording a reasonable opportunity to both the parties, dismissed the petition. Hence the present appeal.

5. The point that arises for consideration in this Civil Revision Petition is **“Whether there is any irregularity, illegality or impropriety in the impugned order?”**

6. If the petition is not allowed, it may not be possible for the petitioner to ventilate his legitimate or legal grievance. If the petition is allowed unconditionally, it may cause untold hardship and financial loss to the respondent. This Court granted interim stay on 24.06.2016 on a condition of petitioner depositing 50% of the decretal amount. Both counsel submitted that the petitioner complied with the orders of this Court dated 24.06.2016.

7. Learned counsel for the respondent submitted that the respondent may be permitted to withdraw the deposited amount.

Learned counsel for the petitioner submitted that the respondent may be permitted to withdraw 50% of the deposited amount by furnishing security.

8. The suit is based on promissory notes. For the reasons best known, the petitioner did not contest the suit. While passing interim orders, the Court has to strike balance between the parties.

9. 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 appeal by imposing some conditions.

10. In the result, the Civil Miscellaneous Appeal is allowed setting aside the order dated 10.12.2015 passed in I.A.No.138 of 2015 in O.S.No.51 of 2014. Consequently, I.A.No.138 of 2015 is allowed. The trial Court is hereby directed to dispose of the suit as expeditiously as possible. The respondent is permitted to withdraw the deposited amount by furnishing security to the satisfaction of learned XVI Additional District Judge, Nandigama. There is no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Dt: 10.12.2018
Rns

T.SUNIL CHOWDARY, J