

THE HONOURBLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CMA No. 201 of 2007

JUDGMENT:

This appeal is filed challenging the order in I.A.No108 of 2006 in O.P.No.35 of 2003 passed by the Chairman, A.P. Co-Operative Tribunal, Warangal on 24.11.2006.

I.A.No.108 of 2006 is filed by the petitioner/respondent No.1 in O.P.No. 35 of 2003, who is the principal borrower of loan from the Respondent/petitioner-credit Society. The said Society filed a case for recovery of Rs.43,150/-. It appears that the appellant in this appeal was set *ex parte* pursuant to a notice published in a local newspaper. The said publication was made in October, 2003 but he filed the I.A.No.108 of 2006 to set aside the *ex parte* order stating that he came to know about the *ex parte* decree only in June, 2006. The respondent-Society filed a counter- affidavit and strongly denied the averments mentioned in the application. After hearing the parties, the Lower Court passed the impugned order on 24.11.2006 dismissing the application filed. The same is now impugned in the present appeal.

The averments made in para-2 of the affidavit filed in support of I.A.No.108 of 2006 are very relevant; wherein it is stated that the respondent-Society has obtained an *ex parte* decree by filing an application for substitute service of notice through local newspaper. The affidavit mentions that the publication was made in October, 2003. This is the aspect that was pointed out by the respondent-Society in the I.A., and noticed by the Lower Court. The Lower Court came to the conclusion that unless and

until, the petitioner was aware of the proceedings and had verified all the records, he would not have been aware of filing of the application for substituted service or of the publication being made in a specific newspaper. The material papers filed along with the CMA shows that the appellant has also urged that he is not a subscriber to the weekly newspaper by name, Charcha.

The affidavit of the guarantor who is supposed to have informed the appellant of the *ex parte* degree is also not filed to support the contention of the appellant that he came to know about the *ex parte* order only in June, 2006.

In the absence of any other material on record and in view of the fact that the affidavit contains details which can only be ascertained by verification of the Court record, this Court concurs with the findings of the Lower Court and holds that the appellant has not approached this Court with clean hands and his contentions are clearly not correct.

Therefore, this Court holds that the Lower Court did not commit any error in passing the impugned order, dated 24.11.2006. There are no merits in the appeal. The appeal is, therefore, dismissed. No order as to costs.

Consequently, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE D.V.S.S. SOMAYAJULU

Date:26.02.2018

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