

THE HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.No.412 of 2012

ORDER:

Heard Mr.Rohit holding for Mr.V.Padmanabha Rao and Aravala Srinivasa Rao for the parties.

The defendant in O.S.No.138 of 2010 is the revision petitioner.

On 28.06.2012, O.S.No.138 of 2010 was decreed ex-parte. The revision petitioner filed I.A.No.1331 of 2011 on 15.07.2011. The interlocutory application for setting aside the ex-parte decree was allowed but the learned trial Judge directed the revision petitioner herein to deposit the suit costs as condition precedent for setting aside the ex-parte decree. Hence, the Civil Revision Petition.

Mr.Rohit contends that the suit is filed for recovering a sum of Rs.91,37,203-81 ps. The costs quantified approximately come to Rs.2 lakhs. Imposing such onerous condition is illegal and amounts to exercising the jurisdiction not in the manner stipulated by law.

Mr.Srinivas Rao vehemently opposes both the grounds urged by the revision petitioner. He relies on the decisions reported in ***Vakati Prabhakar Reddy v. Tenali***

Mohan Rao¹ and Polasani Sucharitha vs. Margadarsi Chit Fund Ltd. rep. by V.Satyanarayana, Branch Manager, Maddi Rajasekhar Reddy, Rayabarapu Suryanarayana and Dasari Rajendrakaran² and firstly prays for dismissing the Civil Revision Petition and secondly requests the Court to direct the trial Court to dispose of the suit expeditiously.

The respondent filed the suit in the year 2010. For the difficulty stated in the affidavit dated 15.07.2011, the written statement could not be filed and resulted in ex-parte decree dated 28.06.2011. This is not a case where negligence on the part of the revision petitioner/defendant could either be noticed or at least concluded by the trial Court. The trial Court by imposing the condition of directing the revision petitioner to deposit suit costs has made revision petitioner deposit substantial money even without adjudication of *lis*. In cases like this, to compensate the prejudice, if any, suffered by the plaintiff/respondent, reasonable condition as terms ought to have been imposed in the fact situation of this case.

The decisions relied on by Mr.Srinivas Rao are distinguishable and I am not persuaded to apply them to

¹ 2003 (2) ALT 76 (D.B)

² 2007 (5) ALT 722

the facts of the case. This Court is also not persuaded by the circumstance that the application is filed within 19 days from the date of passing the ex-parte decree.

Hence, the Civil Revision Petition is allowed. The condition imposed by the trial Court to set aside the ex-parte decree i.e., deposit the costs is set aside and the suit is restored to file. No order as to costs.

The trial Court is directed to dispose of the suit within three months from the date of receipt of copy of this order.

Miscellaneous petitions, if any, pending, shall stand closed.

Dt: 05.09.2018
dv



S. V. BHATT, J

