

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

CIVIL REVISION PETITION NO. 375 OF 2014

ORDER:

This Civil Revision Petition is filed questioning the Order dt.15.07.2013 in I.A.No.238 of 2013 in O.S.No.89 of 2011 passed by the Senior Civil Judge, Mangalagiri.

02. The suit was filed for recovery of amount due on the promissory note. The defendant was set *ex parte*. Thereafter, an application was filed in I.A.No.238 of 2013 to set aside the *ex parte* decree. The said application was contested and it was allowed by the impugned Order dt. 15.07.2013 by which the Court directed the defendant to deposit 1/4th of the decretal amount including the suit costs by 31.07.2013.

03. This Order was not complied with on the ground that the date was wrongly noted.

04. This Civil Revision Petition is filed questioning imposition of the condition to deposit 1/4th of the decretal amount.

05. This Court has heard Smt M.S.Tirumala Rani, learned counsel for the petitioner and Sri G. Vijaya Babu, learned counsel for the respondent.

06. The submission of the learned counsel for the revision petitioner is that imposition of condition to deposit 1/4th of the decretal amount is onerous. She relies on a judgment reported in *Jeypore Sugar Company Limited v. Pamerla Suryarao*¹, wherein a learned single Judge of this Court held that imposition of such condition to set aside an *ex parte* decree is onerous and that under the provisions of Order 9 Rule 13 CPC, the suit costs should be directed to be deposited but nothing more. Therefore, the learned counsel contends that the imposition of condition to deposit 1/4th of the decretal amount is not correct.

07. Learned counsel for the revision petitioner also submits that the Order could not be complied with as there was an agitation for separate State and states that

¹ 1996 (2) ALD 350

the Court should have extended the time instead of dismissing the application.

08. In reply to this, learned counsel for the respondent submits that the petitioner was negligent in his conduct and on the point that he was set *ex parte*, an order was passed on merits, directing the defendant to deposit 1/4th of the decretal amount along with suit costs. Even this Order was not complied with and a Docket Order came to be passed dismissing the application on 31.07.2013.

09. It is his contention that the entire exercise is only to delay the matter. Therefore, he submits that the present Civil Revision Petition should be dismissed.

10. This Court, after hearing both the learned counsel, is of the opinion that the judgment cited by the learned counsel for the petitioner is applicable to the facts of the case.

11. Order 9 Rule 13 CPC only stipulates the deposit of the suit costs and while the objective and the endeavour of the Court below to ensure that the matter is heard with

is laudable an onerous condition cannot be imposed. This Court is of the opinion that imposition of condition to deposit 1/4th of the amount is not as per the mandate of Order 9 Rule 13 CPC, which only talks the deposit of the suit costs and nothing more. Unlike the *discretion* in Order 41 CPC, here, the discretion is limited to the deposit of the suit costs only. This Court is of the opinion that imposition of costs alone is sustainable. Therefore, the Order dt. 15.07.2013 is modified and I.A.No.283 of 2013 in O.S.No.89 of 2011 is allowed, subject to deposit of the suit costs of Rs.33,443/- within a period of four weeks from the date of this Order as the Order is being dictated in the presence of both the learned counsel. The Docket Order dt. 31.07.2013 is also set aside in the interest of justice.

12. It is noticed that the suit is of the year 2011. Therefore, the trial Court is directed to proceed with the trial of the suit on a priority basis. Request for adjournment should be dealt with strictly and in accordance with law. The Order passed by this Court should not be allowed to be exploited by the defendant by seeking time. Efforts

should be made by the trial Court to dispose of the main suit No.89 of 2011 within a period of four months from the date of receipt of a copy this Order.

Accordingly, this Civil Revision Petition is disposed of. Miscellaneous Petition, if any pending, in this case, shall stand dismissed.

D.V.S.S. SOMAYAJULU, J

Date: 12-12-2018
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THE HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU



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