

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.5801 of 2018

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.12-07-2018 in I.A.No.847 of 2018 in O.S.No.475 of 2015 of the Senior Civil Judge at Khammam.

2. Petitioner is defendant in the suit.
3. The respondent filed the said suit against petitioner for recovery of a sum of Rs.14,05,900/- with costs.
4. Petitioner remained *ex parte*.
5. The suit was decreed *ex parte* on 14-02-2017 with costs.
6. Petitioner filed I.A.No.847 of 2018 on 27-11-2017.
7. In the affidavit filed in support the said application, the petitioner denied borrowing any amount from the respondent, and contended that his wife was suffering from severe ill-health due to pregnancy and other reasons, and so he could not contact his counsel and did give instructions to the counsel. He therefore sought for setting aside the *ex parte* decree on the above grounds.
8. Counter-affidavit was filed by respondent opposing the application contending that the allegations made in the said affidavit are false.

9. By order dt.12-07-2018, the Court below allowed I.A.No.847 of 2018 subject to the petitioner depositing Rs.5,00,000/- in any Nationalized Bank as fixed deposit for a period of two years.

10. Assailing the same, this Revision is filed.

11. Learned counsel for petitioner contended that while setting aside the *ex parte* decree, such onerous condition to deposit Rs.5,00,000/- could not have been imposed by the Court below and placed reliance on the judgment of the Supreme Court in **Tea Auction Ltd., Vs. Grace Hill Tea Industry and another**¹.

12. The Supreme Court in **Tea Auction Ltd.** (1 supra) interpreted Order IX Rule 13 C.P.C. and held:

“16. Order IX Rule 13 of CPC did not undergo any amendment in the year 1976. The High Courts, for a long time, had been interpreting the said provision as conferring power upon the courts to issue certain directions which need not be confined to costs or otherwise. A discretionary jurisdiction has been conferred upon the court passing an order for setting aside an ex parte decree not only on the basis that the defendant had been able to prove sufficient cause for his non-appearance even on the date when the decree was passed, but also other attending facts and circumstances. It may also consider the question as to whether the defendant should be put on terms. The court, indisputably, however, is not denuded of its power to put the defendants to terms. It is, however, trite that such terms should not be unreasonable or harshly excessive. Once unreasonable or harsh conditions are imposed, the appellate court would have power to interfere therewith.”

¹ AIR 2007 SC 67

13. Though learned counsel for respondent sought to support the order passed by the Court below, by no stretch of imagination, the condition imposed by the Court below to deposit Rs.5,00,000/- towards costs as condition precedent to set aside *ex parte* decree, can be said to be reasonable.

14. Therefore, in view of the above decision of the Supreme Court, the order dt.12-07-2018 in I.A.No.847 of 2018 in O.S.No.475 of 2015 of the Senior Civil Judge, Khammam is set aside, and the said order is modified to the effect that the *ex parte* decree passed on 14-02-2017 is set aside subject to the petitioner depositing costs of Rs.5,000/- to the credit of the said suit within two (02) weeks from the date of receipt of copy of the order. The respondent is permitted to withdraw the same without furnishing any security. In default of compliance with this condition, the C.R.P. shall stand dismissed.

15. The Civil Revision Petition is allowed with the above directions. No costs.

16. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-07-2019

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