

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.7298 of 2017

O R D E R :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the docket order dt.22.11.2017 in I.A.No.223 of 2017 in O.S.No.92 of 2015 passed by the XXVII Additional Chief Judge, City Civil Court at Secunderabad.

Petitioner herein is the plaintiff in the suit O.S.No.92 of 2015.

The petitioner filed the said suit against the respondents/defendants for recovery of a sum of Rs.20,70,022/- from the respondents with interest and costs.

The respondents entered appearance through a counsel, but did not file their written statement and were set *exparte*. Thereafter, *exparte* decree was passed on 05.12.2016 in O.S.No.92 of 2015.

On 02.01.2017, the respondents filed I.A.No.223 of 2017 in O.S.No.92 of 2015 invoking Order 9 Rule 13 r/w. Section 151 of C.P.C., to set aside the *exparte* decree dt.05.12.2016 in O.S.No.92 of 2015, stating that though they engaged an Advocate, their father had heart problem and so he could not contact the said Advocate and file written statement. They stated that on 23.12.2016, he was informed by his Advocate that the suit was decreed *exparte* on 05.12.2016 and, therefore,

an application was filed to set aside the said *exparte* decree on 02.01.2017.

Counter affidavit was filed by the petitioner opposing the said application contending that the same counsel was appearing for the respondents, both in civil and criminal cases filed by him against them and hence it cannot be contended that the said counsel did not inform about the civil suit to the respondents. It was also contended that respondent No.1 was appearing in the Criminal Court about same time as O.S.No.92 of 2015 was pending and the said criminal case was also pending in the same premises where the suit O.S.No.92 of 2015 was pending and, therefore, *exparte* decree dt.05.12.2016 cannot be set aside.

By order dt.22.11.2017, the Court below set aside the *exparte* decree dt.05.12.2016 on condition of respondent No.2 filing written statement by 06.12.2017 and on deposit of the suit costs by the said date.

Assailing the said order dt.22.11.2017 in I.A.No.223 of 2017, this Civil Revision Petition is filed.

Learned counsel for the petitioner contended that the order dt.22.11.2017 in I.A.No.223 of 2017 passed by the Court below does not indicate any reason as to why it set aside the *exparte* decree dt.05.12.2016 in O.S.No.92 of 2015.

Prima facie, there is a force in the said contention, but the fact remains that application to set aside the *exparte* decree

dt.05.12.2016 was filed within 30 days from the date when the suit was decreed *ex parte*. In the affidavit filed in support of the application in I.A.No.223 of 2017, the respondents had indicated that they had already engaged a counsel to represent them in the suit and the said counsel did not inform them about the hearing of the suit. They also stated about the illness of their father during the relevant period.

In my considered opinion, when there is no undue delay and the party has acted with due diligence and immediately filed an application to set aside the *ex parte* decree dt.05.12.2016, the Court below did not commit any error of jurisdiction in allowing the said application taking into account the stakes involved in the suit.

Therefore, the order dt.22.11.2017 in I.A.No.223 of 2017 in O.S.No.92 of 2015 passed by the Court below does not warrant any interference by this Court, in exercise of its jurisdiction under Article 227 of the Constitution of India.

For the aforesaid reasons, the Civil Revision Petition fails and it is accordingly dismissed. No order as to costs.

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

M.S. RAMACHANDRA RAO, J

12.04.2019.

Msr

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