

HON'BLE SRI JUSTICE M.GANGA RAO

CIVIL REVISION PETITION No.730 of 2019

ORDER:

This Civil Revision Petition is filed by the petitioner under article 227 of the Constitution of India, seeking a direction to dispose the I.A.No.650 of 2018 in O.S.No.194 of 2007, on the file of III Additional Junior Civil Judge, Kadapa.

2. The brief facts of the case are that the petitioner is the 4th defendant in the Suit filed by the first respondent/plaintiff, for recovery of the amount, Rs.88,651/- against the petitioner and 3 others, alleging that the 2nd respondent bid the Chit and failed to pay the subsequent installments and that statutory notice was issued demanding the defendants to pay the remaining amount of Rs.82,000/-, as they failed to repay the amount. Thereafter suit summons were served on the petitioner and respondents 2 to 4. But the petitioner/4th defendant in the suit having received the summons failed to appear before the Court on the ground that his father's name was wrongly shown as Raghava Reddy instead of Krishna Reddy and he was set exparte, then exparte decree was passed, for which he filed a petition under Order IX Rule 13 of CPC to set aside the exparte decree passed against him on 27.9.2012 along with a delay condoned petition under section 5 of the Limitation Act to condone the delay of 1990 days, stating that the first

respondent/plaintiff and 2nd respondent/1st defendant colluded with each other and forged his signature in the loan agreement and also in other connected papers, and that he had good chances to defend his case, thereby sought to allow the same and to stay all further proceedings.

3. The grievance of the petitioner is that pending this I.A.No.650 of 2018 filed under section 5 of the Limitation Act, under Order IX Rule 13 of the CPC, to condone the delay and to set aside the exparte decree, he has also filed a petition to stay of execution of the decree, which is pending. Whereas the first respondent/plaintiff/Decree holder taking steps and filed E.P.316/2017 in O.S.No.194 of 2007, also filed a petition under Order 21 Rule 48 and section 60 of the CPC for issuance of notice through their garnishee by attaching the salary of the JDr's, for realization of the E.P. amount of Rs.1,37,439/-, if the respondent/plaintiff is allowed to realize the amount by way of attaching the salary of the petitioner/4th defendant in the suit, he will put to irreparable loss and injury and he has to face financial hardship and he has a good case and prays to hear and dispose of the I.A..

4. In the facts and circumstance of the case and considering the submissions made by the learned counsel for the petitioner, on perusal of the record, this Court found that petitioner filed I.A.No.650 of 2018 in O.S.No.194 of 2007, which is pending on 22.02.2019. The respondent /plaintiff is

also filed counters and the Court is not taking up the I.A. for enquiry and proceeding with E.P.No.316 of 2017, adjudicating I.A. No.650 of 2008, if the E.P. is proceeded, the petitioner will be deprived of his right to contest the suit and he will put to financial hardship.

5. Considering the same, this Court felt it appropriate to dispose of the C.R.P. in the interest of justice and directing the Trial court to consider and dispose of the said I.A., on its own merits, as per law as expeditiously as possible, within a period of 2 months, from the date of receipt of a copy of this Order.

6. Accordingly, the C.R.P. is disposed of.

Consequently, Miscellaneous Petitions, if any, pending shall stand closed.

M.GANGA RAO, J

Date: 20 .03.2019

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THE HON'BLE SRI JUSTICE M.GANGA RAO

CIVIL REVISION PETITION No. 730 of 2019

Date: 20.03.2019

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