

(1949) 12 MAD CK 0038

In the Madras High Court

Case No : Civil Revision Petition No. 208 of 1948

Karumuri Surayya

APPELLANT

Vs

Thadepalli Pushpavalli Thayaramma and Others

RESPONDENT

Date of Decision : 15-12-1949

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : AIR 1950 Mad 918 : AIR 1950 Mad 618 : (1950) 63 LW 162 : (1942) 55 LW 162

Hon'ble Judges : Chandra Reddi, J

Bench : Single Bench

Advocate : B.V. Ramanarasu, for the Appellant; M. Appa Rao, for the Respondent

Final Decision : Dismissed

Judgement

Chandra Redi, J.—This civil revision petition raises a question of some importance regarding the interpretation of Order 9, Rule 13, Civil P. C. This petition is filed by the defendant seeking to revise the order of the District Judge who. confirmed the order of the District Munsif allowing his application to set aside an ex parte decree subject to certain conditions.

2. The petitioner filed C. M. P. No. 1014 of 1946 for setting aside an ex parte decree passed against him on 10th July 1946. The District Munsif allowed the application of the petitioner subject "only to the condition that the costs of the suit and the mesne profits decreed were deposited into Court. The defendant who was aggrieved by that order preferred an appeal to the District Judge, Kistna, complaining that the conditions imposed were onerous. The District Judge dismissed the appeal and confirmed the order of the trial Court holding that the Munsif had a wide discretion in imposing such terms as he thought fit.

3. In the civil revision petition filed against that order it has been urged before me on behalf of the petitioner that under Order 9, Rule 13, the Court has no power to direct the defendant to deposit the decretal amount. It has been argued

that the expression "such terms" in the rule relates only to payment of costs, and that the words "payment into Court or otherwise" refers only to "costs" immediately preceding that expression. According to the learned counsel for the petitioner the use of comma after the word "costs" and before the words "payment into Court" supports his contention. I do not think that I can accept this contention.

4. Order 9, Rule. 13 provides that :

"If the defendant satisfies the Court that the summons were not duly served and that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit."

It seems to me that the wording "upon such terms as to" in the Rule should be read as applying not only to costs but to "payment into Court or otherwise as it thinks fit" as well. I do not think that the punctuation referred to above in the rule in any way lends support to the contention of the advocate for the petitioner. It looks to me that the Rule does not restrict the power of the Court to impose conditions for setting aside an ex parte decree to payment of costs only. The wording of the Rule is comprehensive enough to include conditions as to payment into Court of decretal amount or such other conditions as the Court thinks fit. Ordinarily the Court will not impose onerous conditions upon the defendant, such as the payment into Court of the whole or part of the decretal amount or as to furnishing of security therefore etc. The conditions as to deposit of decretal amount or such similar terms are imposed only under special circumstances. It is one thing to say that it is either inequitable or unjust to put the defendant to such onerous terms, but it is quite a different thing to say that the Court has no jurisdiction at all to impose such terms under any circumstances. It has been laid down in *Sonatun v. Dinonath*, 26 Cal. 222 : 3 C. W. N. 228, that the Court has ample jurisdiction u/s 108 which corresponds to the present Order 9, Rule 13 to impose conditions as to giving security for the satisfaction of any decree that might eventually be passed in this case. To the same effect is the decision in *Shyam Lal v. Ram Narain*, A. I. R. 1920 Pat. 660 : 5 Pat, L. J. 420. See also *David Sasoon and Co. v. Shivjiram*, A. I. R. 1926 Sind 50 : 90 I. C. 236.

5. No decided case of our High Court on this matter has been placed before me. The counsel for the petitioner relied on an unreported case of *Pandurang Row J.*, in *Govindasami Naicker v. Javanmull Sowcar*, C. R. P. No. 986 of 1940. But that case does not deal with this question. In that case, the only question that arose for consideration was whether the granting of the application for setting aside an ex parte decree was as a matter of mere indulgence or whether the defendant was prevented by sufficient cause from attending the Court on the day fixed for the hearing of the suit and whether the trial Judge was justified in imposing onerous terms on the defendant in the circumstances of that case.

6. I am of opinion that the intendment of Order 9 , Rule 13 is to confer power upon the Court to impose conditions for setting aside an ex parte decree as to costs, as to payment of the decretal amount whole or in part or as to such other conditions as the Court thinks fit. Under the provisions of law, the Court has ample jurisdiction to impose any of the three conditions mentioned above. I therefore think that the contention of the advocate for the petitioner cannot prevail.

7. In the circumstances the civil revision petition is dismissed with costs.

8. The time for depositing the decretal amount will be extended till the end of January 1950.