

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CRP No.2857 OF 2015

ORDER:

This civil revision petition is filed against the order dated 13-04-2015 passed in IA No.583 of 2010 in OS No.92 of 2006 by the Junior Civil Judge, Nandikotkur, dismissing the said IA, filed under Section 5 of the Limitation Act, to condone the delay of 22 days in filing the petition to set aside the dismissal order.

2. Learned counsel for the petitioner contended that though the delay is 22 days in filing the petition to set aside the dismissal order, the Court below instead of considering the averments made in the affidavit filed in support of the IA that the petitioner was suffering with back pain, ought to have considered the petition liberally to advance the cause of justice. Learned counsel also submits that though the petitioner has shown sufficient cause, the Court below erroneously dismissed the petition.

3. Though notice was ordered by this Court to the respondent, the office endorsement shows that the respondent "refused" to take the notice and such a conduct on the part of the respondent amounts to service of notice on him.

4. A perusal of the impugned order goes to show that subsequent to the framing of the issues, the petitioner instead of proceeding with the trial without any satisfactory and cogent reasons appears to be not ready to begin with the trial and in spite of giving opportunities, he failed to commence the trial. However, having regard to the facts and circumstances of the case and inasmuch as the property rights of the petitioner are involved, delay can be condoned by putting the petitioner to costs.

5. In the result, the impugned order is set aside and the above IA No.583 of 2010 is allowed on condition of the petitioner depositing costs of Rs.2,000/- payable to the respondent-defendant, within a period of four weeks from the date of receipt of a copy of this order. The civil revision petition is accordingly allowed. Miscellaneous petitions, if any, pending in

this case shall stand disposed of. No order as to costs.

A.RAJASHEKER REDDY, J

Dated: 09.10.2015

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