

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.4880 OF 2016

ORDER:

This Civil Revision Petition is filed by the petitioner/Decree holder, questioning the docket order dated 20.07.2016, passed by the Junior Civil Judge, Kavali, in E.A.No.123 of 2015 in E.P.No.38 of 2014 in O.S.No.445 of 2006, wherein and whereby the application filed by the petitioner/D.Hr seeking to set aside the order dated 17.03.2015, passed by the court below in E.P.No.38 of 2014, was dismissed.

The Civil Revision Petition was listed on 14.10.2016 and as there was no representation on that day, the matter was directed to be listed after two weeks. When once again the matter was listed on 07.11.2016, there was no representation and the matter was directed to be posted after three weeks. However, even today, when the matter is listed, there is no representation for the petitioner. In the circumstances, the civil revision petition is being disposed of basing on the material available on record.

It is the case of the petitioner that he is the Decree Holder in E.P.No.38 of 2014 on the file of the Principal Junior Civil Judge, Kavali. The petitioner filed a suit in O.S.No.445 of 2006 on the file of the Principal Junior Civil Judge, Kavali for recovery of Rs.20,536/- with subsequent interest. The said suit was decreed on 25.03.2009 for a sum of Rs.28,572/- with costs. Then the petitioner filed E.P.No.38 of 2014 seeking to execute the judgment and decree and when the petitioner failed to appear before the Court below on 17.03.2015, the Court below dismissed the said

E.P for non prosecution. Thereafter, the petitioner filed an application in E.A.No.123 of 2015 in E.P.No.38 of 2014 in O.S.No.445 of 2006 seeking to set aside the order dated 17.03.2015, passed by the Court below dismissing the E.P.No.38 of 2014 for non prosecution. Petitioner in his affidavit had categorically stated that his wife was suffering from paralysis and he had an appointment with the doctor for her treatment on 17.03.2015 and hence the petitioner could not appear before the Court below on that day. Further, as the E.P was at the notice stage and there was no reason for the Court below not to believe the affidavit filed by the petitioner. It may be borne in mind that the petitioner has already succeeded by prosecuting the suit and the judgment and decree obtained by the petitioner cannot be made ineffective merely on technicalities. Dismissal of the E.P merely because on a particular day, the petitioner was absent would not instil the confidence in the litigant public. There is no prejudice as such would have been caused, if one more opportunity is given to the petitioner. As a matter of fact, in the E.P which was filed in 2015, orders were passed only in 2016. It may also be borne in mind that in the judicial process itself delays are occurring and the dismissal orders of this nature will burden on the Courts with peripheral work. It may also be noted that the petitioner placed before this Court the medical record of his wife suffering from certain ailments from 2013 on wards. In those circumstances, the civil revision petition deserves to be allowed setting aside the impugned order.

Accordingly, the Civil Revision Petition is allowed setting aside the order dated 20.07.2016, passed by the Junior Civil

Judge, Kavali, in E.A.No.123 of 2015 in E.P.No.38 of 2014 in O.S.No.445 of 2006 with a direction to Court below to restore the E.P.No.38 of 2014 in O.S.No.445 of 2006 and allow the petitioner for prosecuting the same. However, there shall be no order as to costs.

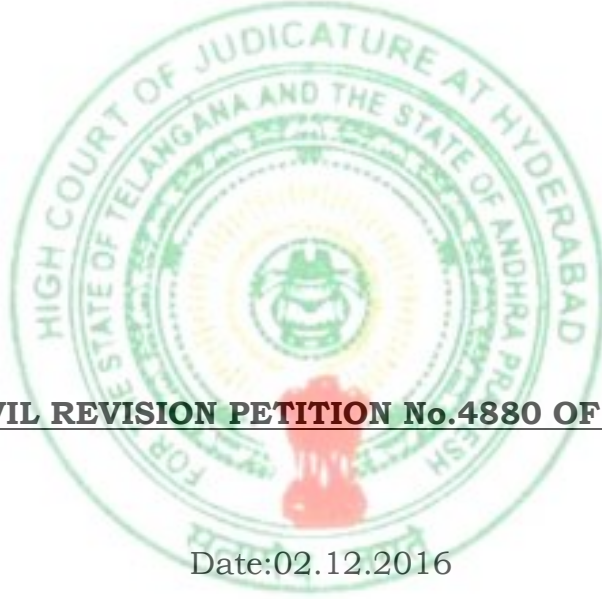
Miscellaneous Petitions, if any pending in this revision petition, shall stand closed.

CHALLA KODANDA RAM,J

Date:02.12.2016.
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