

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Revision Petition No.5388 of 2017

ORDER:

In an application for condonation of delay of 120 days filed under Section 5 of the Limitation Act, 1963, in I.A. No.509 of 2013 in O.S. No.38 of 2006, the learned Principal Junior Civil Judge at Nirmal, did not convince himself with the reasons assigned in condoning the delay on the ground that the petitioner failed to submit any medical proof when he suffered with illness and thereby dismissed the application, which compelled the petitioner to approach this Court.

2. Heard Srinivas Reddy Balakisti, learned counsel for the petitioner. He would submit that the petitioner suffered illness on account of Jaundice and severe fever and that was the reason, though, affidavit in chief-examination was filed he could not attend the Court on 23.4.2013, that resulted in dismissal of the suit itself.

3. The learned counsel would submit that the learned Junior Civil Judge was wrong in not considering the reasons shown as there cannot be any medical certificate for treatment of Jaundice as no Allopathic treatment is required.

4. When notice sent to the respondent by ordering personal notice, memo is filed in proof of service, and it is stated that the respondent refused to receive the notice and, therefore, the cover

containing notice was returned. There is endorsement on the envelope showing 'refused, returned to the sender', there is initial of the authority or person official on duty i.e., 16.10.2017.

5. Now, turning to the merits, the Court below ought not to have dismissed the application on the mere ground that the medical proof is not filed and ought to have examined whether there can be any Allopathic treatment for the illness stated by the petitioner. No reason is assigned except recording the contentions of both sides and observing that the case was adjourned from 4.10.2012 till 23.04.2013 and the petitioner was not getting ready despite affording several chances. It is true, the petitioner ought to be diligent in prosecuting the suit and he cannot just leave it without showing interest having filed the affidavit. But the learned counsel would submit that the chief-examination of the petitioner as P.W.1 was already filed.

6. When substantial rights are involved since the relief claimed is for declaration of title and mandatory injunction the Court ought to be liberal and adopted liberal approach as guided by the Hon'ble Apex Court in **Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others**¹.

7. Therefore, keeping in view, the substantial rights that are involved, though, the suit property is only 43 sq. feet, the order of the learned Principal Junior Civil Judge is hereby set aside restoring the

¹ (1987) 2 SCC 107

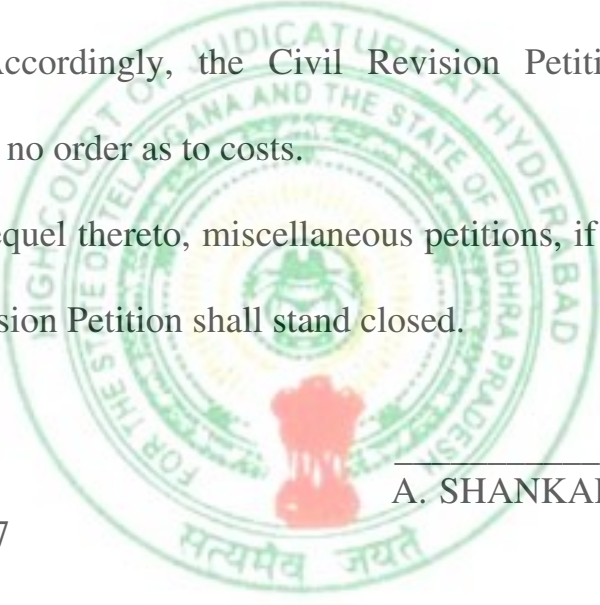
suit and also allowing the application filed to set aside the dismissal order dated 23.04.2013, restoring the suit to its file.

8. Since the suit relates to the year 2006, it is desirable to direct the learned Principal Junior Civil Judge, Nirmal, to dispose of the suit preferably within six months from the date of receipt of a copy of the order. The petitioner herein, who is the plaintiff in the suit, is directed to cooperate with the Court and complete evidence on his side within two months from the date of commencement.

9. Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the Civil Revision Petition shall stand closed.

Dt. 27.10.2017
gbs


A. SHANKAR NARAYANA