

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

**CIVIL REVISION PETITION No. 3530 OF 2017**

**ORDER:**

This Revision is directed against the order dated 13.06.2017 in E.A. No. 141 of 2016 in E.P. No. 67 of 2016 in O.S.No. 87 of 1990 on the file of the Principal Senior Civil Judge's Court at Nellore.

O.S. No. 87 of 1990 was filed by the respondent - plaintiff against the petitioner - defendant for recovery of a sum of Rs.1,98,774/-. The said suit was decreed on 31.07.2015. Seeking execution of the said decree, E.P. No. 67 of 2016 was taken out and the said E.P. was allowed *ex parte* by order dated 24.06.2016. Therefore, the petitioner has filed an Application to set aside the *ex parte* order. Since there was a delay of 38 days in taking out that Application, he filed E.A. No. 141 of 2016 under Section 5 of the Limitation Act to condone the same and to permit him to file the counter and contest the case on merits. That Application was also dismissed, through the order under Revision.

Heard learned counsel for the petitioner.

Though the learned counsel for the petitioner raises various issues, it is not necessary for this Court, in the facts of the present case, to delve upon the same. The principal reason stated in the Application filed to condone the delay was that since the advocate representing the petitioner could not attend the Court when the matter was taken up for consideration, the petitioner sought time for engaging another advocate. The Court below granted time and adjourned the matter to 24.06.2016, but, on the said day also, the

petitioner did not attend the Court on account of ill-health. As a result, he was set *ex parte*.

A counter-affidavit was filed in E.A.No. 141 of 2016 denying the ground taken by the petitioner, however, considering his age, this Court feels that there is every possibility of his being not well on that particular day. Though, the Court below has rightly observed that the petitioner had been protracting the Execution Proceedings, particularly considering the fact that the delay is only 38 days, the same deserves to be set aside, subject to certain terms.

The Civil Revision Petition is accordingly allowed setting aside the order dated 13.06.2017 in E.A.No. 141 of 2016, on payment of costs, to the respondent, of Rs.5,000/- (Rupees five thousand only) within one week from the date of receipt of a copy of this order.

It is also made clear that if the petitioner does not cooperate with the Execution Proceedings, the Court below is at liberty to pass appropriate orders on merits, treating that there is no defence on the part of the petitioner. No costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

**CHALLA KODANDA RAM, J**

28<sup>th</sup> July 2017

Issue CC in two days.  
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