

**HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU**

**CIVIL REVISION PETITION No.1188 OF 2010**

**ORDER**

This petition is filed against the order dated 16.07.2009 passed in I.A.No.263 of 2009 in O.S.No.215 of 2006 by the Principal Junior Civil Judge, Narsipatnam.

The suit is filed for recovery of money. In that suit, I.A.No.431 of 2008 was filed to send the signature of D4 for comparison by an expert. The said petition was allowed on 27.02.2009 imposing a condition that the petitioner shall deposit the expert fee and appear before the Court on 13.03.2009. The petitioner failed to comply with the said condition and was not present in the Court. Therefore, I.A.No.431 of 2008 was dismissed. To set aside the said dismissal order, I.A.No.263 of 2009 was filed. This application was dismissed after contest. Questioning the same, the present revision is filed.

Heard Sri K.Subrahmanyam, learned counsel for the petitioner and Sri Maheswara Rao Kuncham, learned counsel for the respondent.

I.A.No.263 of 2009 is filed to set aside the order dated 13.03.2009 in I.A.No.431 of 2008. From a reading of the record, it appears that when I.A.No.431 of 2008 was allowed, the Court below did not fix or determine the expert fee. It is also apparent from the record that from 27.02.2009 to 13.03.2009, the petitioner did not seek any clarification from the Court about the fee to be deposited. As the fee was not deposited, the Court dismissed the petition. Thereafter, learned counsel for the petitioner filed an affidavit stating that as the fee was not fixed by the Court, they

could not deposit the amount and that as the petitioner was attacked with paralysis, he could not appear before the Court. This affidavit was affirmed on 16.03.2009 i.e., three days after the order was passed.

From a reading of the entire record, it appears that there were laches on the part of the petitioner and his counsel also. However, taking note of the fact that immediately after the default order was passed, an application was presented and the counsel has given an affidavit explaining the reasons for the absence of his client, this Court feels that a lenient view should be taken, particularly, as the application for sending the disputed signatures to an expert was allowed by the Court.

Hence, the Civil Revision Petition is allowed subject to the condition of the petitioner to pay costs of Rs.3,000/- to the respondent within two weeks from the date of this order.

The Miscellaneous Petitions, if any, pending shall stand closed.

Date : 28.02.2018  
ssp

**D.V.S.S.SOMAYAJULU, J**