

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

C.R.P.No.5315 of 2018

ORDER

This revision is filed challenging the order dated 16.07.2018 passed in E.A.No.59 of 2018 in E.A.No.86 of 2017 in E.P.No.73 of 2015 in O.S.No.803 of 2002 by the Principal Junior Civil Judge, Nandyal, Kurnool District, dismissing the petition filed to set aside the order of dismissal dated 26.02.2018 passed in E.A.No.86 of 2017 in E.P.No.73 of 2015.

2. Heard learned counsel for the petitioner/D.Hr. On 24.10.2018, when the matter came up for admission, this Court permitted the petitioner to take out personal notice to the respondent by registered post with acknowledgment due and accordingly, the respondent has received notice on 29.10.2018, as per the acknowledgment filed by the petitioner vide USR No.90671 of 2018. Though notice was served on the respondent, none appeared on his behalf. In those circumstances and considering the nature of the relief sought, the revision can be disposed of.

3. As can be seen from the order impugned, on earlier occasion, when the EP was posted on 18.11.2016, the petitioner/D.Hr., was absent and consequently, EP was dismissed for default. Seeking restoration of the said EP and to set aside the dismissal order, the petitioner filed E.A.No.86 of 2017 stating that he became sick on 18.11.2016. The said E.A., was also dismissed on 26.02.2018 due to

non-representation of the counsel for the petitioner. Seeking to set aside the said order, the petitioner filed E.A.No.59 of 2018, which was also dismissed on the ground that he failed to explain the reasons for the absence on 26.02.2018. The affidavit filed in support of E.A.No.59 of 2018 does not disclose any reasons for non-representation of the petitioner's counsel on 26.02.2018. In that view of the matter, the Court below has rightly dismissed E.A.No.59 of 2018.

4. However, considering the fact that the petitioner is the decree-holder and keeping in view the valuable right accrued to him in the judgment and decree passed in O.S.No.803 of 2002, dismissal of E.A., due to absence of his counsel on 26.02.2018, by the Court below, is not just and reasonable. Hence, the Court below ought to have taken a lenient view in allowing the E.A. by putting the petitioner on some terms.

5. In those circumstances, the Civil Revision Petition is allowed, setting aside the order dated 16.07.2018 passed in E.A.No.59 of 2018 in E.A.No.86 of 2017 in E.P.No.73 of 2015 in O.S.No.803 of 2002 by the Principal Junior Civil Judge, Nandyal, Kurnool District, by restoring E.A.No.86 of 2017 to file, on payment of costs of Rs.2,000/- (Rupees two thousand only) payable by the petitioner/decreed-holder to the respondent/judgment debtor, within a period of two weeks from the date of receipt of a copy of this order.

No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

CHALLA KODANDA RAM, J

30th November, 2018

sj

