

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.3531 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the revision petitioner/defendant, challenging the order, dated 24.01.2017, passed in I.A.(SR) No.4081 of 2016 in O.S.No.89 of 2012, by the Principal District Judge, Khammam.

2. Heard. Perused the record.

3. The revision petitioner/defendant filed the subject unregistered interlocutory application under Section 5 of the Limitation Act, 1963, requesting the Court below to condone the delay of one year five months eleven days, i.e. from 28.02.2015 to 15.08.2016, in filing the petition under Order IX Rule 13 of CPC to set aside the ex parte decree, dated 29.01.2016, passed in the subject suit. In the said unregistered interlocutory application, the Court below passed the impugned order, which reads as follows:

“No representation from petitioners. Office objections sustains. Petition is rejected.”

4. As seen from the record, the impugned order was passed before numbering the subject interlocutory application. When the subject interlocutory application was listed before the Court below, there was no representation for the petitioners therein and that led to passing the impugned order by the Court below.

5. In the given circumstances, the Court below ought to have given some more time to the revision petitioner/defendant to comply with

the office objections or at least, the Court below ought to have assigned reasons for sustaining the office objections. It did not do so.

6. Under these circumstances, the impugned order, dated 24.01.2017, passed in I.A.(SR) No.4081 of 2016 in O.S.No.89 of 2012, by the Principal District Judge, Khammam, is set aside. Consequently, I.A.(SR) No.4081 of 2016 is restored to file. The Court below is directed to dispose of the said I.A.(SR) No.4081 of 2016 afresh, after affording reasonable opportunity to the revision petitioner/defendant.

7. The Civil Revision Petition is, accordingly, allowed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

29th January, 2020
SSP

Dr. SHAMEEM AKTHER, J