

C.M.P.No.393 of 2015
in
A.S.No.752 of 1995

P.R.SHIVAKUMAR, J.

This petition has been filed under Order XLI Rule 19 of the Code of Civil Procedure for the restoration of the appeal in A.S.No.752/1995, which was dismissed for default on 20.09.2013. The limitation for seeking restoration of an appeal dismissed for default is governed by Article 122 of the Limitation Act, 1963, according to which, the petition should have been filed within 30 days from the date of dismissal of the appeal. The person seeking restoration being the appellant cannot contend that the limitation for filing such a petition shall be 30 days from the date of knowledge of passing of the decree dismissing the appeal for default. Article 122 makes it clear that the starting point of limitation is the date of passing of the decree/order dismissing the appeal. Only the next Article (123) refers to the knowledge of the decree. The same is in respect of an application filed by a defendant or respondent to set aside the ex-parte decree/ex-parte judgment and for rehearing the appeal.

2. This petition has been filed without accompanied by a petition under Section 5 of the Limitation Act, 1963 seeking condonation of delay in filing the petition on the assumption that limitation for filing the present petition would start only from the date of knowledge of dismissal

P.R.SHIVAKUMAR, J.

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of the appeal for non prosecution. The absence of knowledge may be a reason, which could be cited for seeking condonation of delay and it cannot be contended that the limitation shall start only from the date of knowledge. Since the petition has been filed after the expiry of the period of limitation and it is also not accompanied by a petition under Section 5 of the Limitation Act, the same deserves to be dismissed as barred by limitation.

Accordingly the petition is dismissed.

03.09.2015

Index : Yes/No
Internet : Yes/No
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