

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION No.1906 of 2014

ORDER:

Heard Sri K.S. Gopala Krishnan, Learned Counsel for the petitioner and Sri V. Brahmaiah Chowdary, Learned Counsel for the respondents and, at their request, the C.R.P. is disposed of at the stage of admission. This C.R.P. is preferred against the order passed by the District Judge, Chittoor in I.A. No.124 of 2008 in A.S. No.72 of 2004 dated 01.05.2014.

The application in I.A. No.124 of 2008 was filed, under Order 41 Rule 19 CPC, by the appellant in A.S. No.72 of 2004 requesting the Court below to set aside the order, dismissing the appeal for default, dated 28.04.2008. The contention of the petitioner-appellant before the Court below was that her Counsel was away at Madras to attend the obsequies of his mother and could not, therefore, argue the matter on 28.04.2008. The Learned District Judge, in the order under revision, observed that the affidavit, filed in support of the I.A, was silent as to the reasons which prevented the petitioner from attending the Court on 28.04.2008, though the matter was posted for hearing as a last chance; there was no material, that too by way of the affidavit of the Advocate of the petitioner, that he was away from Chittoor and, therefore, could not argue or to make any representation; there was no ground preventing the petitioner-appellant from attending the Court on 28.04.2008, when the old appeal stood posted for hearing as a last chance; and there were no bonafides in the petition.

An affidavit is filed before this Court by Sri K. Pattabhi, Learned Counsel for the appellant in A.S. No.72 of 2004, stating that, on the day before 28.04.2008, he had gone to Madras to attend his mother's ceremony (obsequies); hence, he could not be present on 28.04.2008 to argue the appeal; and his absence on 28.04.2008 was neither willful

nor deliberate.

Sri K.S. Gopalakrishna, Learned Counsel for the petitioner, would submit that the petitioner had deposited the entire E.P. amount before the Court below and, as the appeal was dismissed for default, he would suffer substantial injustice if he is not given an opportunity of arguing the appeal. In view of the affidavit filed by the Advocate before this Court, stating that his absence on 28.04.2008 was because he was away at Madras to attend the obsequies of his mother, I consider it appropriate to give the petitioner one more opportunity to have the appeal argued before the Court below. The order, under challenge in this C.R.P, is set aside on condition that the petitioner pays the 2nd respondent costs of Rs.2,000/- within two weeks from today. On proof of payment being filed before the Court below, the appeal shall be restored to file, and shall be heard on merits. It is made clear that, if the appellant or his Counsel fail to appear before the Learned District Judge on the date fixed for hearing, it is open to the Court below to proceed and dispose of the appeal in accordance with law. The Civil Revision Petition is disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

(RAMESH RANGANATHAN, J)

Date: 27.03.2015

MRKR