

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.4909 of 2014

ORDER:

Heard Sri G.Krishna Murthy, learned counsel for the petitioners and Sri Srinivasa Rao Pappu, learned counsel for the respondent.

2. The short point which arises for consideration in this Revision Petition is whether an appeal under Order 43 Rule 1 (d) CPC is maintainable against an order allowing an application to set aside an *ex parte* decree on payment of costs.
3. Order 43 Rule 1 (d) CPC allows a Civil Miscellaneous Appeal to be filed only against an order rejecting an application under Order 9 Rule 13 CPC but does not permit an appeal against the order allowing an application under Order 9 Rule 13 CPC.
4. In the present case, an application filed by the petitioners under Order 9 Rule 13 CPC was allowed on 22-07-2014 in I.A.No.1203 of 2007 in O.S.No.505 of 2004 by the Principal Junior Civil Judge, Amalapuram, on payment of costs of Rs.200/-.
5. This order was questioned in C.M.A.No.1 of 2010 before the II Additional District Judge, East Godavari at Amalapuram by the respondent. The said appeal was allowed on 24-10-2011.
6. Challenging the same, this Revision Petition is filed.
7. Learned counsel for the petitioners contended that the very appeal C.M.A.No.1 of 2010 is not maintainable and therefore the order dt.24-10-2011 in C.M.A.No.1 of 2010 deserves to be set aside.

8. Learned counsel for the respondent has not been able to show that an appeal lies against the order 22-07-2014 in I.A.No.1203 of 2007 in O.S.No.505 of 2004.
9. Therefore, this Civil Revision Petition is allowed and the order dt.24-10-2011 in C.M.A.No.1 of 2010 of the II Additional District Judge, East Godavari, Amalapuram is set aside on the ground that the C.M.A. itself is not maintainable. However, this does not preclude the respondent from challenging the order in I.A.No.1203 of 2007 in an appropriate forum. No costs.
10. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 08-10-2015

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