

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

CIVIL REVISION PETITION No.4531 of 2014

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ORDER:

Heard Sri C.Raghu, learned counsel for petitioner and Sri V.L.N.G.K.Murthy, learned counsel for respondents.

2. This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.10-10-2014 in I.A.No.1028 of 2011 in A.S.No.244 of 2004 of the VII Additional District Judge, West Godavari at Eluru.

3. The said appeal filed by respondents was dismissed for default on 07-06-2011.

4. The respondents filed I.A.No.1028 of 2011 under Order IX Rule 9 CPC to set aside the said order dismissing the appeal for default, to restore the appeal to file and to provide an opportunity to respondents to get the appeal disposed of on merits.

5. In the affidavit filed in support of the said application, the

1st respondent stated that on 07-06-2011 when the appeal was dismissed for default, he could not attend the Court and get the case conducted since he was in North

India attending some seminars. It is further stated that the counsel for respondents also could not attend the Court since he was engaged in Tanuku in Court work.

6. Counter affidavit was filed to the said application by the petitioner referring to some adjournments, which had been sought by petitioners prior to dismissal of the appeal for default on 07-06-2011. It is further contended that an Advocate-Commissioner had been appointed in the suit to survey the lands and to divide the properties and at this stage it is not permissible to set aside the order dismissing the appeal for default on 07-06-2011 and decide it on merits.

7. By order dt.10-10-2014, the Court below allowed I.A.No.1028 of 2011 on payment of costs of Rs.1,000/- by respondents to petitioner on or before 21-11-2014. It held that there was no undue delay in filing the application to set aside the order dt.07-06-2011 dismissing the appeal for default and that the application had been filed within 30 days from the date of the said order. It held that the appeal had been pending from the year 2004, that it was dismissed only on 07-06-2011 and even if any steps had been taken for getting the final decree passed, that would not be relevant in deciding the question whether the appeal is to be restored or not. It held that a new Court had been established at Tanuku and the matter was

shuttled between Eluru and Tanuku and therefore, it is a fit case to restore the appeal and hear the matter on merits subject to respondents paying costs of Rs.1,000/- to petitioner.

8. Challenging the same, this Revision is filed.

9. The learned counsel for petitioner contends that the Court below ought not to have restored the appeal since at earlier point of time I.A.No.1028 of 2011 itself had been dismissed for default and challenging the same, a Revision was filed with delay of more than 500 days and this indicates that respondents had been negligent.

10. The said Revision C.R.P.No.1148 of 2014 was allowed by this Court after hearing both sides and I.A.No.1028 of 2011 was restored to the file of the Court below with a direction to decide it within 30 days. This order was passed on 27-03-2014. The said order had attained finality since no further proceeding in the Supreme Court were taken by petitioner challenging it. Therefore, the said fact is not relevant at all for deciding this Revision.

11. I.A.No.1028 of 2011 having been filed within 30 days from the date of dismissal of the appeal for default on 07-06-2011, it cannot be said that there is any undue delay

on the part of respondents in filing the application to restore the appeal. Also, the petitioner has been compensated with costs. Therefore, I do not agree with the contention of the learned counsel for petitioner that the Court below had committed an error in allowing I.A.No.1028 of 2011.

12. Therefore, I do not find any merit in the Revision and it is accordingly dismissed. No costs.

13. Since the appeal is of the year 2004, both parties are directed to cooperate with the disposal of the appeal and the same shall be disposed of within three (03) months from the date of receipt of a copy of this order.

14. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 30-06-2015

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