

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

**CIVIL REVISION PETITION No.4771 of 2014**

**ORDER:**

This Revision is filed challenging the docket order dt.20-10-2014 in I.A.No.229 of 2010 in O.S.No.36 of 2002 of the Senior Civil Judge, Piler.

2. The petitioner herein is plaintiff in the above suit. He filed the suit for partition of the plaint schedule property and allotment of 14/80<sup>th</sup> share therein. In the suit, he impleaded 6 defendants.

3. Written statement was filed by 2<sup>nd</sup> defendant opposing the suit claim.

4. It appears that 1<sup>st</sup> defendant died and I.A.No.15 of 2011 was filed under Section 5 of the Limitation Act, 1963 to condone the delay of 195 days in filing petition to set aside abatement and in filing L.R. application to bring on record his legal representatives. That application was dismissed on 11-09-2014 on the ground that neither party was present.

5. It appears that the suit itself had been dismissed for default on 22-07-2010.

6. The petitioner filed I.A.No.229 of 2010 stating that on account of viral fever, he could not attend the Court on that day and the Court therefore should restore the suit. This application was filed on 19-08-2010 within 30 days from the date on which the suit was dismissed for default.

7. Without disposing of this application for 4 years, on 20-10-2014, the Court below dismissed it on the ground that I.A.No.15 of 2011 had been dismissed by it on 11-09-2014.

8. Challenging the same, this Revision is filed.

9. Heard Sri Ch.Janardhan Reddy, learned counsel for petitioner and Sri Mahadeva Kanthrigala, learned counsel for respondent.

10. Admittedly, application I.A.No.229 of 2010 was filed on 19-08-2010 within 30 days of the dismissal of the suit for default on 22-07-2010. The said application has to be considered by the Court below on its own merits. It cannot be dismissed on the ground that I.A.No.15 of 2011 was dismissed by it on 11-09-2014. The reasoning of the Court below is clearly perverse and cannot be sustained. Such orders, as are passed by the Court below, shake the faith of the litigants in

the judicial system and are strongly deprecated.

11. In this view of the matter, the Civil Revision Petition is allowed, and the order dt.20-10-2014 in I.A.No.229 of 2010 in O.S.No.36 of 2002 of the Senior Civil Judge, Piler is set aside and the said I.A. is restored to the file of the said Court, and the Court below is directed to decide the same in accordance with law within a period of six (06) weeks from the date of receipt of a copy of this order positively. No costs.

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

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**JUSTICE M.S. RAMACHANDRA RAO**

Date: 23-09-2015

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