

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL MISCELLANEOUS APPEAL No.24 of 2015

JUDGMENT:

Plaintiff in O.S.No.629 of 2009 on the file of the Court of Prl. Senior Civil Judge, Tirupati is the appellant in the present Civil Miscellaneous Appeal filed under Order 43 Rules 1 and 2 of Code of Civil Procedure.

This appeal assails the order, dated 06-11-2014 passed by the said Court in I.A.No.568 of 2014.

Heard learned counsel for the appellant. Despite service of notice none appears for respondent.

The appellant herein filed the said suit against the respondent for specific performance of agreement of sale, dated 08-07-2009. The said suit instituted by the appellant herein was dismissed for default on 11-07-2011. Thereafter the plaintiff/appellant herein filed two Interlocutory Applications, one under the provisions of Section 5 of the Limitation Act seeking condonation of delay of 39 days in filing application under Order 9 Rule 9 of Code of Civil Procedure and second application for restoration of the suit dismissed for default on 11-07-2011.

The application filed under Section 5 of the Limitation Act, seeking condonation of delay in filing application under

Order 9 Rule 9 of Code of Civil Procedure was numbered as I.A.No.1680 of 2011. Resisting the said application respondent filed a counter. The learned Senior Civil Judge allowed the said application by way of an order, dated 11-08-2014, condoning the delay of 39 days in filing application under Order 9 Rule 9 of Code of Civil Procedure.

Thereafter the application filed under Order 9 Rule 9 of Code of Civil Procedure, praying for restoration of the suit was numbered as I.A.No.568 of 2014. The Court below dismissed the said application by way of an order, dated 06-11-2014. The said order is under challenge in the present appeal.

It is contended by learned counsel for the appellant that the order under challenge passed by the learned Senior Civil Judge is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order 9 Rule 9 of the Code of Civil Procedure. It is further contended that having allowed the application filed under Section 5 of the Limitation Act, the learned Senior Civil Judge grossly erred in rejecting the application filed under Order 9 Rule 9 Code of Civil Procedure.

In the above backdrop, now the issue that arises for consideration of this Court is whether the order under challenge passed by the learned Prl. Senior Civil Judge is sustainable and tenable or whether the same warrants any

interference by this Court under Order 43 Rules 1 and 2 of Code of Civil Procedure.

The information available before this Court manifestly discloses that the appellant herein filed O.S.No.629 of 2009 against the respondent for specific performance of agreement of sale, dated 08-07-2009. The property covered by the plaint schedule is immovable property. The fact remains that the application filed by the appellant herein under Section 5 of Limitation Act was allowed by the learned Prl. Senior Civil Judge, by way of an order, dated 11-08-2014.

The reasons assigned in the affidavit filed in support of I.A.No.1680 of 2011 and the supporting affidavit in I.A.No.568 of 2014 are verbatim the same.

Having allowed the application filed under Section 5 of the Limitation Act on the same grounds, this Court does not find any justification on the part of the Court below in dismissing the present application filed under Order 9 Rule 9 of Code of Civil Procedure.

Having regard to the above reasons and taking into consideration the submissions of learned counsel for the appellant, this Court is inclined to allow the present Civil Miscellaneous Appeal.

For the aforesaid reasons, the Civil Miscellaneous Appeal is allowed, setting aside the order, dated 06-11-2014 passed in I.A.No.568 of 2014 and consequently, O.S.No.629 of 2009 stands restored to file and the Court below is directed to dispose of the suit, in accordance with law. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Civil Miscellaneous Appeal shall stand closed.

September 16, 2016

Pn

A.V. SESA SAI, J



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