

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.571 of 2008

Dated 23-3-2016

Between:

Sadhu Mohanarao (died) and others.

_____.Appellants.

And:

Paidi Satyanarayana.

_____.Respondent.

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CIVIL MISCELLANEOUS APPEAL No.571 of 2008

JUDGMENT:

This appeal is preferred against the order dated 11-11-2004 in A.S.No.73 of 2002 on the file of II Additional District Judge Court (FTC), Srikakulam.

Respondent herein filed O.S.No.36 of 1998 before Junior Civil Judge, Srikakulam for the relief of specific performance of contract of sale dated 11-6-1994. Trial Court refused relief of specific performance but ordered for refund of advance sale consideration with interest. Aggrieved by the order of refund of sale consideration, plaintiff preferred appeal to the District Court and I Appellate Court, on a consideration of material, held that the trial court having upheld the correctness of sale agreement ought to have decided the issue whether the plaintiff was always ready and willing to perform his part of contract, set aside the judgment of trial court and remitted back the suit directing trial court to formulate specific issue as to the readiness and willingness of the plaintiff and decide the matter afresh uninfluenced by the observations made in the appeal. Questioning the said remand order, defendants preferred the present appeal with delay of 215 days.

This court condoned delay on 27-6-2008 and ordered notice to the respondent/plaintiff and respondent in spite of service of notice neither appeared in person nor through any advocate.

When the matter is taken up for hearing, neither the appellants counsel is present nor any representation is made on behalf of the appellants' counsel.

The remand order is of the year 2004 and no stay is granted by this court in this appeal, therefore, by this time, trial court might have disposed of the very suit itself.

Considering these aspects, I am of the view that the appeal is liable to be dismissed for non-prosecution.

Accordingly, this Civil Miscellaneous Appeal is dismissed for non-prosecution. No costs.

As a sequel to the disposal of this appeal, Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE

S.RAVI KUMAR

Dated 23-3-2016.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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Dvs