

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.4389 of 2016

and

Civil Revision Petition No.1603 of 2017

Common Order:

These revisions are filed by the plaintiff in a suit for recovery of money, challenging two orders, by one of which the application of the petitioner under Order XXII, Rule 4 of the Code was dismissed and by the other of which, the application under Order IX, Rule 9 CPC for restoration of the suit got dismissed.

2. Heard Mr. Narasimha Rao Gudiseva, learned counsel for the petitioner.

3. In C.R.P.No.4389 of 2016, notice was ordered on 17-02-2017. Personal notice was also permitted. The learned counsel for the petitioner has filed proof of service enclosing copies of the acknowledgement cards having an endorsement to the effect "refused". Therefore, the revisions are taken up.

4. The suit was dismissed for non-prosecution on 08-7-2010. Immediately, the petitioner filed I.A.No.1589 of 2010 under Order IX, Rule 9 CPC for restoration. During the pendency of this application, the sole defendant died on 18-12-2011. Therefore, the petitioner took out an application in I.A.No.970 of 2012 for bringing the legal heirs on record.

5. The Court below first dismissed the application under Order XXII, Rule 4 CPC on the ground that the petitioner ought to have impleaded the respondents in I.A.No.1589 of

2010 and ought not to have allowed the claim against the 6th respondent to be dismissed for non-payment of process fee. But we do not know how the above logic could be sustained. The very application I.A.No.970 of 2012 was for bringing on record the legal representatives of the sole respondent in I.A.No.1589 of 2010. The Trial Court virtually put the cart before the horse.

6. Therefore, both the revisions are allowed. The suit shall stand restored to file.

7. However, the Court below shall issue summons to the newly impleaded defendants and proceed thereafter with the trial. The miscellaneous petitions, if any, pending in these revisions shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

24th March, 2017.
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