

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.5445 of 2016

ORDER:

The present Civil Revision Petition came to be filed questioning the order dated 20.09.2016 passed in I.A. (sr.) No.469 of 2016 in A.S.No.24 of 2012 on the file of the I Additional District Judge, Chittoor.

It is stated that the appellate court passed final orders on merits without hearing the petitioner-appellant and immediately thereafter, petitioner-appellant filed an application under Order IX Rule 9 CPC to restore the appeal. It is stated that the said application is returned on the ground that the same is not maintainable as orders in the appeal are passed on merits.

Learned counsel for the petitioner-appellant submits that though the application ought to have been filed under Order 41 Rule 9 CPC, by mistake, it was filed under Order IX Rule 9 CPC and the same was therefore returned.

Without challenging the application, which has been returned, the present Civil Revision Petition came to be filed questioning the order passed in the main appeal itself.

Learned counsel for the petitioner-appellant relied on the judgment of the Supreme Court in *Ajit Kumar Singh and Ors. V. Chiranjibi Lal and Ors.*¹ and *Sarvan Singh vs. Kishan Singh (dead)*

¹ (2002) 3 SCC 609

*thr. Lrs., and Ors.*², to show that the appellate court ought not to have dismissed the appeal on merits, when learned counsel for the appellant failed to appear on the date of hearing.

It is to be noticed that in both the circumstances, the parties preferred application for restoration of the appeal and the same was rejected. In the instant case, the order rejecting the application on merits has not been challenged and it is fairly admitted by the learned counsel for the petitioner-appellant that though application ought to have been filed under Order 41 Rule 9 CPC, by mistake, it was filed under Order IX Rule 9 CPC and the same was therefore returned.

In view of the above, learned counsel for the petitioner-appellant shall file a fresh application keeping in view the judgment of the Supreme Courts referred to above, in which event the appellate Court shall deal with the same in accordance with law.

Civil Revision Petition is accordingly disposed of.

As a sequel, miscellaneous petitions pending, if any, stand closed. No costs.

C. PRAVEEN KUMAR, J

February 17, 2017
MRR

² (2007) 13 SCC 574