

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.874 OF 2017

ORDER:

The present revision petition, under Article 227 of the Constitution of India, is filed aggrieved over the order, dated 02.09.2016, passed in C.M.A.No.3 of 2016 by the learned Principal District Judge, Adilabad.

2. The order under challenge reads thus:

“Appellant absent even today though given sufficient opportunities and in spite of respondent being present and ready.

Appeal is dismissed as devoid of merit after going through the petition and hearing the respondent.”

3. The submission of the learned counsel for petitioner is that Order XLI Rule 11 (4) of the Code of Civil Procedure, 1908, would contemplate that a first appellate Court, not being the High Court, when dismisses an appeal under Sub-Rule (1), it shall deliver a judgment, recording in brief its grounds for doing so, and a decree shall be drawn up in accordance with the judgment, but there has been no compliance of the said Rule by the learned District Judge, while passing the order under challenge.

4. It is true, no decree appears to have been drafted, despite the fact that the appeal was disposed of. In fact, the order under challenge is passed in C.M.A., but not in first appeal. Therefore, the said

submission is without any merit. Even otherwise, a chance ought to have been afforded to the petitioner and the C.M.A. ought to have been decided on merits.

5. Though, service was completed on the respondent, as the track consignment details filed would show that the item was delivered to the respondent, none appears for him in the present revision petition. Certainly, there cannot be any prejudice to the respondent, in case, the order under challenge is set aside and a direction is given to the learned Principal District Judge to dispose of the C.M.A. on merits.

6. Therefore, the order under challenge is set aside and the C.M.A. is restored to file. The revision petitioner is hereby directed to co-operate with the Court below to tender arguments. The learned Principal District Judge, Adilabad, is directed to dispose of the C.M.A. within two months from the date of receipt of a copy of this order.

7. Accordingly, the revision petition is allowed. Miscellaneous Petitions, if any, pending in this revision petition shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

June 30, 2017.
MD