

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY****CIVIL REVISION PETITION No.476 of 2017****ORDER:**

This Civil Revision Petition, under Section 115 of CPC, is filed questioning the Order dt. 05.12.2016 in CFR No.1508 of 2016 in I.A.No.....of 2016 in O.S.No.237 of 2012 passed by the Senior Civil Judge at Sangareddy, rejecting the application filed under Order 9 Rule 9 r/w 151 CPC even before its registration on the ground that the remedy available to the petitioner is somewhere else, but not in the present Petition filed under Order 9 Rule 9 CPC.

It is the case of the petitioner that she filed suit for declaration of title and other reliefs and while the suit is pending, the counsel on record, without the knowledge of this petitioner, not-pressed the suit playing fraud and therefore, the dismissal of the suit as not-pressed by the counsel is illegal and requested this Court to restore the suit by exercising power under Order 9 Rule 9 CPC setting aside the dismissal order, but the trial Court dismissed the petition assigning its reasons even at the pre-registration stage.

Aggrieved by the Order dt. 05.12.2016 passed by the trial Court, the present petition is filed mainly contending that she was cheated by her counsel colluding with the defendants without discharging his minimum obligation to inform the petitioner and thereby he is guilty of misconduct and passing such an order based on such representation of the counsel colluding with the defendants, is unsustainable and the Court below ought to have allowed the application.

During hearing, learned counsel for the petitioner, while reiterating the contentions urged in the grounds of the petition drawn

the attention of this Court to the judgment reported in *Dankha Devi Agarwal (D) by Lrs v Tara Properties Pvt. Limited and others*<sup>1</sup> to contend that when a suit was dismissed as not-pressed, the suit can be restored on the application filed by the petitioner to recall the Order passed by the trial Court dismissing the suit, if established that the suit was not-pressed by playing fraud against the petitioner.

Order 9 Rule 9 CPC deals with setting aside the Order of dismissal of the suit for default and it bars a fresh suit. But here, dismissal was not for default, but due to not-pressing the suit by the counsel for petitioner on record. When the counsel for the petitioner not-pressed the suit without obtaining any instructions from the client, it amounts to misconduct, if proved that the petitioner did not take instructions from the client while not-pressing the suit. It is represented that a complaint was lodged with the Bar Council of Andhra Pradesh to take disciplinary action against the counsel and it is pending for consideration before the General Body of Bar Council of Andhra Pradesh.

When the suit was not dismissed for default, the petitioner is not entitled to invoke Order 9 Rule 9 of CPC. At best, she is entitled to file a petition under Section 151 CPC to recall the dismissal order passed by the Court below dismissing the suit as not-pressed. Even in the facts in *Dankha Devi's* case, referred above, the plaintiff filed a petition to recall the order and the petition was allowed by the Apex Court though it was dismissed by the trial Court and appellate Court. Therefore, the present petition under Order 9 Rule 9 CPC before the trial Court is not maintainable. However, the petitioner is entitled to

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<sup>1</sup> AIR 2006 SC 3068

file appropriate petition to recall the dismissal order of the suit or for any other relief raising all grounds, if she wishes.

Accordingly, this Civil Revision Petition is disposed of. Liberty is given to the petitioner to file appropriate application before the trial Court.

Miscellaneous Petition, if any pending, in this case, shall stand dismissed.

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**M. SATYANARAYANA MURTHY, J**

Date: 31-01-2018  
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



**C.R.P. No.476 of 2017**

Dt. 31-01-2018

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