

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND**

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No. 971 of 2016

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed in W.P.M.P. No. 45305 of 2012 in W.P. No. 27947 of 2011 dated 15.3.2016.

The appellants herein filed the said W.P.M.P. requesting this Court to set aside its earlier order dated 27.2.2012 dismissing the Writ Petition for non-prosecution. This application also came to be dismissed by the order of the Learned Single Judge dated 15.3.2016, against which the present appeal is preferred.

In the order under appeal before us, the learned Single Judge noted that, after four adjournments, notice before admission was ordered on 3.12.2011, and W.P.M.P. for interim relief was dismissed on 26.12.2011; thereafter on 23.1.2012 and 8.2.2012, learned counsel for the petitioners did not appear; as a result, the matter was posted to 27.2.2012 on which day also, the learned counsel did not appear; and, in view thereof, the Writ Petition was dismissed for non-prosecution.

The learned Single Judge, thereafter, noted the contents of the application, filed to set aside the earlier order dismissing the Writ Petition for non-prosecution, wherein all that was stated was that on 27.02.2017, when the matter was listed under the caption for dismissal, counsel was not present due to his personal inconvenience, and this fact was appraised to the learned counsel; the petitioners had good chance of success in the present Writ Petition; and, in the event the order dated 22.2.2012 dismissing the Writ Petition for default was not set aside and the case not restored, the petitioners would be put to irreparable loss.

The learned Single Judge further observed that the appellant-writ petitioners did not even care to see that the Writ Petition was dismissed

on 27.2.2012, they had mentioned it as 22.2.2012; if there was any inconvenience to the learned counsel, steps should have been taken immediately; the present application was filed only on 19.4.2012; and, after filing the present application also, an adjournment was sought and it was granted on 23.2.2016 by three weeks. The learned Single Judge was not satisfied with the cause shown in support of the request made to set aside the earlier order dismissing the Writ Petition for non-prosecution.

It is evident from a reading of the application, filed to set aside the earlier order dismissing the Writ Petition for non-prosecution, that the only explanation offered, for the counsel's absence on 27.2.2012 when the matter was listed under the caption "for dismissal", was of personal inconvenience. It is evident, from the order under appeal, that it was because the learned counsel for the petitioners did not appear, on several earlier occasions, was the matter directed to be posted, for dismissal, on 27.2.2012. Even on that day, the learned counsel did not appear and, except to plead personal inconvenience, no reasons were furnished as to why the counsel could not appear on any one of the several days earlier when the matter was listed before the Court.

The scope of interference in an *intra-Court* appeal, under Clause 15 of the Letters Patent, is extremely limited. It is only if the order under appeal suffers from a patent illegality would interference be justified. We find no such infirmity in the order under appeal.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

11th April, 2018

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Date:11.04.2018

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