



C.M.P.No.14110 of 2021
in O.S.A.No.372 of 2018

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M.DURAI SWAMY, J.
and
SUNDER MOHAN, J.

(Order of the Court was made by M.Duraiswamy, J.)

The petitioner has filed the above petition seeking to set aside the order passed on 30.04.2021 dismissing the Original Side Appeal for non-prosecution.

2.It is pertinent to note that the counsel did not appear not only on 30.04.2021, he did not appear even on 23.04.2021, hence, the Registry was directed to list the matter on 30.04.2021 under the caption for dismissal. Left with no other alternative, the Division Bench dismissed the appeal for non-prosecution on 30.04.2021. Thereafter, on 27.07.2021, the petitioner filed the present application seeking to restore the appeal which was dismissed for non-prosecution on 30.04.2021.

3.The learned counsel for the respondent submitted that the reasoning given by the petitioner in the affidavit filed in support of the petition are bereft of details, hence, the petition is liable to be dismissed.

4.Admittedly, the appellant has filed the suit for partition, which was dismissed by the learned Single Judge.



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5.The learned counsel for the petitioner/appellant fairly submitted that the appeal may be restored to file on payment of costs, for which, the learned counsel for the respondent has no objection.

6.In view of the submissions made by the learned counsel on either side, in order to give one more opportunity to petitioner/appellant, the appeal can be restored to file on payment of costs. Accordingly, the order passed on 30.04.2021 in O.S.A.No.372 of 2018 is set aside and the appeal is restored to file on payment of costs of Rs.5,000/- (Rupees five thousand only) payable by the petitioner/appellant within a period of one week from the date of receipt of a copy of this order, failing which, the petition shall be dismissed automatically without any further reference to this Court. It is made clear that the petitioner/appellant shall pay the sum of Rs.5,000/- to the learned counsel for the respondent before this Court within the stipulated time of one week.

7.The petition is ordered.

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[M.D.,J.] [S.M.,J.]
29.08.2022



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