



WEB COPY



CMP.No.10862 of 2016
in OSA.No.150 of 2008

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S.S.SUNDAR, J.
and
P.B.BALAJI, J.

(Order of the Court was made by S.S.SUNDAR, J)

This application is filed to set aside and restore the above appeal, which was dismissed for default on 15.06.2016.

2. When the appeal was listed for hearing on 15.06.2016, the learned counsel appearing for the appellant was not present. Recording the appearance of the counsel for the respondents 1 and 2, the appeal was dismissed for default on 15.06.2016. Immediately on 20.06.2016, the appellant filed the above application to set aside the order dated 15.06.2016 and restore the appeal.

3. The learned counsel appearing for the appellant filed an affidavit before this Court stating that he could not appear before this Court on the day when the matter was listed for hearing on account of marriage of a son of an office typist, which was solemnized on 16.06.2016.



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4. The learned counsel appearing for the first respondent states that when the appeal was posted earlier, this Court expressed its opinion against the appellant and therefore, the appellant counsel did not appear when the matter was listed on 15.06.2016.

5. The learned counsel appearing for the second respondent reported no instructions from his client in the application for restoration.

6. This Court is satisfied with the reasons stated in the affidavit filed in support of the petition. Both the learned counsels appearing for the respondents have not filed counter even though the application was filed in the year 2016. However strange reasons are given before this Court. When counter affidavit is not filed before this Court and the application is filed without any delay immediately after the dismissal of the appeal for non-prosecution, this Court is unable to doubt the *bona fides* of the petition. Therefore, this petition is allowed.

(S.S.S.R.J.,) (P.B.B.J.,)
06.04.2023

pvs



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