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C.M.P. No. 4356 of 2024
in S.A. No. 504 of 2016

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R.N.MANJULA, J.

The petitioners /defendants have filed this petition to condone the delay of 419 days in filing the petition to set aside the exparte decree passed in the second appeal in favour of the respondent /plaintiff. The Second Appeal has been filed by the plaintiff who had filed the original suit for claiming recovery of possession. Though the Trial Court decreed the suit in favour of the plaintiff, on the first appeal filed by the defendants, the judgment and decree of the Trial Court was set aside and the First Appeal was allowed and the judgment and decree of the First Appellate Court was set aside by the judgment and decree of the Second Appeal. As the Second Defendant did not make his appearance, my predecessor has passed a judgment dated 07.11.2022 in the Second Appeal by allowing the same.

2. On perusal of the order dated 07.11.2022 in the Second Appeal, it is seen that the reason to the order is based on the submissions made on behalf



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of the Learned Counsel for the appellant by taking into consideration of the material facts and the materials available on record. As the order has been passed on merits, the petitioner cannot simply state that they have got the right to file the petition to set aside the exparte order. As the defendants ought to have challenged the judgment dated 07.11.2022 passed on merits by way of preferring Special Leave Petition. There is no question of considering any petition to condone the delay in filing the petition to set aside the exparte decree as alleged.

3. In the order dated 07.11.2022 also it has been observed that notice had been sent to the defendants to their very same address mentioned in this petition, but they had refused to receive the same. Thereafter, the substituted service has been ordered and service of notice got completed. As the defendants got the first appeal allowed in his favour, the observation of the First Appellate Judge for allowing the First Appeal would be the very argument of the defendants before the Second Appellate Court. This Court has analyzed the merits of the judgment of the First Appellate Court while



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appreciating the arguments advanced on the side of the appellant. It could have been better if the petitioner had made their appearance and advanced their arguments. However, no prejudice is seen to have been caused as the order dated 07.11.2022 has been passed after appreciating the reasons given in the judgments of the Courts below.

4. In view of the above, this Miscellaneous Petition is dismissed. No costs.

06.11.2024

Maya



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