



CMP(MD).No.13179 of 2023 in
SA(MD).No. 472 of 2011

MUMMINENI SUDHEER KUMAR, J.

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This petition is filed to restore the Second Appeal in S.A(MD).No. 472 of 2011, which was dismissed for default on 05.09.2023.

2. The Second Appeal was dismissed as abated on the ground that the sole appellant died. No steps have been taken to bring on record LRs of the deceased sole appellant within 90 days. However, this application is filed to restore the Second Appeal as though the same was dismissed for non appearance of the appellant. But, the Second Appeal was dismissed as abated as appropriate steps are not taken by the petitioner. Hence, the question of restoring the Second Appeal on this application does not arise. Accordingly, this petition is dismissed.

05.02.2024

trp



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The Second Appeal was dismissed as abated on the ground that the sole appellant died, but no steps have been taken to bring on record LRs of the deceased sole appellant. Today, it is brought to the notice of this Court by the learned counsel appearing on either side that the sole appellant is alive and he filed a petition in CMP(MD).No.13179 of 2023 duly sworn in affidavit.

2. In view of the same it appears that this Court mis-construed that the sole appellant is no more and dismissed the Second Appeal as abated on 05.09.2023. In view of the fact that the sole appellant is alive, it is appropriate to set aside the order, dated 05.09.2023 and restore the Second Appeal.

3. In the circumstances, this Court is inclined to *suo motu* recall the order, dated 05.09.2023 made in SA.No.472 of 2011 and accordingly, the order dated 05.09.2023 is recalled and the Second Appeal is restored on the file of this Court.



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4. As it is reported that the sole respondent is no more, the learned counsel for the appellant is granted two weeks time to take appropriate steps to bring on record the LRs of the deceased sole respondent. If no steps are taken within the time stipulated above, this Court will be left with no other option except to dismiss this appeal as abated.

5. Registry is directed to post the Second Appeal for hearing on 19.02.2024.

05.02.2024

trp

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