

ORDER ON I.A

1. The application is filed under section 151 of the code of civil procedure seeking an order to restore the appeal dismissed as per the order of this court dated 16.12.2019.
2. The contents of the application could be summarised as follows;
3. The appeal is preferred against the order passed on a petition in c.mis.1/ 2015 filed under order IX rule 13 of the code of civil procedure before the trial court for setting aside the ex parte decree passed by the trial court in o.s.81/ 2011. th petition in c.mis.1/ 2015 was dismissed on 23.01.2017. the appeal was preferred against the order of dismissal of c.mis.1/ 2015. the appeal was dismissed without giving the appellant an opportunity of being heard and without assigning reasons. Hence the appellant has

sought for an order to allow the application and give the appellant an opportunity of being heard.

4. The crux of the objection filed to this application could be summarised as follows;
5. The application filed under section 151 of the code of civil procedure is misconceived. The counsel for the appellant had submitted before this court that the matter would be pursued before the trial court. On the basis of the submission the appeal came to be dismissed on 16.12.2019. therefore now restoring the appeal would be nothing but a waste of valuable time of the court. There are no merits in the application. Now when once an order is passed on the submission of the learned counsel for the appellant filing of this application to restore the appeal would be sheer waste of time. Hence the respondent

no.7 has sought for an order to dismiss the application with costs.

Points for consideration;

6. The following points arise for my consideration:

(1) Whether the petitioner made out grounds to allow the application?

(2)What Order?

7. My answers on the above points are:

Point No.1: In the affirmative

Point No.2: As per the final order, for the following:

:: R E A S O N S ::

8. Point No.1 :- The contention of the appellant that there was no reason assigned for such an order dismissing the appeal and it was cryptic order as no substance is to make unnecessarily aspiration against the court. Moreover the conduct of the appellant could be very well understood by going through the

materials available on record. The intention of the appellant appears to be in so far as the appeal is concerned order was passed on the basis of submission made by the learned counsel Smt. VGA advocate for the appellant on 16.12.2019. That the learned counsel herself had submitted that the relief would be pursued before the trial court, the question of assigning any reasons would not have arise. Apart from that the ground mentioned to enable this court to allow this application relates to the order itself. Considering the conduct of the appellant subject to payment of costs of Rs.3,000/- the appellant could be given an opportunity as ultimately the parties must have to be denied an opportunity of ensuring full fledged trial or hearing. Accordingly the point is answered in the affirmative.

9. Point No.2:- In view of above discussions on

MA No.1/2018

point No1,I proceed to pass the following;

:: O R D E R ::

The application is allowed subject to
payment of costs of Rs.3,000/-.

The cost of Rs.3,000/- shall be paid to
TLSC Jamkhandi.

The petitioner shall argue the matter
on or before 10.02.2020.

(Balachandra.N.Bhat)
Prl. Senior Civil Judge
& *JMFC Jamkhandi.*