

C.M.P.No.14387 of 2016 in
C.M.A. No.SR75253 of 2014

T.RAJA, J.

The petitioner as plaintiff has filed a suit in C.S. No.559 of 2009 before this Court against the respondents for recovery of money and in view of increase of pecuniary jurisdiction, the suit was transferred to XIX Additional District Judge, City Civil Court, Chennai and numbered as O.S. No.11983 of 2010.

2.Learned counsel appearing for the petitioner would submit that in view of transfer of the suit, the counsel could not follow the same and hence, it was dismissed for default on 31.01.2011 and subsequently, it was restored on 10.09.2012. Thereafter, when the suit was posted for Trial on 28.01.2013, the same was adjourned to 28.02.2013 and due to mistake committed by the junior counsel in not noting the correct date of hearing, it was again dismissed for non-prosecution. He would further submit that thereafter, he has moved a petition under Order 9 Rule 9 of C.P.C. But the said petition was dismissed stating that the petitioner was not entitled to get the relief as prayed for in the petition filed under Order 9 Rule 9 of C.P.C. and as against the said order, the petitioner has proposed to file an appeal. Adding further, he would submit that thereafter, the appeal papers has been returned

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by the registry for certain compliance and therefore, the delay has occurred, which is neither willful nor wanton.

3.Although this Court is not inclined to entertain this petition to condone the delay in re-presenting the appeal, learned counsel appearing for the petitioner repeatedly requested this Court to condone the delay giving a last chance to him and also to his client. Since it is a suit for recovery, this Court is of the view that for the mistake committed by the counsel, the innocent client would not be put to grave prejudice. Accordingly, the delay of 686 days in re-presenting the appeal is condoned, on condition that the petitioner pays a cost of Rs.5,000/- (Rupees five thousand only) to the Tamil Nadu State Legal Services Authority, High Court, Chennai, within a period of ten days from today.

09.11.2016

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