

CMP.No.4214 of 2019 in
W.A.No.1824 of 2017

T.S.SIVAGNANAM,J
AND
V.BHAVANI SUBBAROYAN,J

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

We have heard Mr.M.Elumalai, learned counsel appearing for the appellant and Mr.S.N.Ravichandran, learned counsel for the first respondent.

2. This petition has been filed for restoration of the writ appeal which was dismissed for non-prosecution on 16.04.2018 which reads as follows:

"When this appeal came up before this Court on 05.04.2018, there was no representation for the appellant and hence it was directed to be posted on 09.04.2018 under the caption "for dismissal". Thereafter, the matter was posted on 09.04.2018 and adjourned to 10.04.2018. On 10.04.2018, the matter was again adjourned on the request to bring the legal heirs of the deceased-first respondent on record. Thereafter, the appeal has been posted today. Even today there is no representation for the appellant.

2. Hence, the writ appeal is dismissed for default. No costs. Consequently, the connected miscellaneous petition is also dismissed."

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3. From the above, it is seen that sufficient opportunity was granted to the petitioner/municipality to appear before this Court. Yet they did not appear, therefore, the Court dismissed the appeal for non prosecution. Even after the dismissal of writ appeal, no steps were taken by the Commissioner, Municipality to restore the appeal.

4. In the affidavit filed in support of the condone delay petition, it is stated that they came to know about the dismissal of the appeal only after the statutory notice was issued in the Contempt Petition. This is no explanation for condonation of inordinate delay of 232 days. Thus, in the absence of sufficient cause being shown for not filing the restoration petition within the period of limitation, we have no other option except to dismiss the petition.

5. Accordingly, the Civil Miscellaneous Petition in CMP.No.1824 of 2017 was dismissed.

(T.S.S.J.) (V.B.S.J.)
26.04.2019

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