

A.No.7853 of 2019
in
C.S.No.1144 of 2009

M.SUNDAR,J.

Read this in conjunction with and in continuation of earlier proceedings of this Court dated 12.12.2019, which reads as follows:

'Counsel for applicant/plaintiff is before this Court, but there is no representation for the respondents.

With intention of giving one more opportunity to the respondents, Registry is directed to list this matter on 13.12.2019.'

2. The position is no different today. Ms.Sujatha, learned counsel for applicant/plaintiff is before this Court, but there is no representation for the two respondents, though they have entered appearance through counsel and name of the counsel is duly shown in the cause list. To be noted, cause list also makes it clear that Court notice has also been duly served on both the respondents. This application has been filed to condone the delay of 988 days in filing application for restoring Tr.C.S.No.1144 of 2009, which came to be dismissed for default on 02.12.2016. The reason for the delay and the manner in which the applicant/plaintiff gained knowledge is articulated in Paragraphs 8 and 9 of the affidavit filed in support of the instant application, which read as follows:

'8. It is further submitted that both the suits viz., T.O.S.No.28

of 2006 and the Tr.C.S.No.1144 of 2009 were dismissed for non-prosecution, by order, dated 02.12.2016 made by this Hon'ble Court. I have no notice of the dismissal of the suits. My counsel did not inform me of the developments in the proceedings and dismissal of the suits. I bonafide believed that the suits were pending.

'It is further submitted that recently I noticed that the 1st defendant Thiru C.S.Manoharan is constructing additional floor in the suit property. Immediately I approached my earlier counsel and enquired about the suits. Only then i came to know that the suits were dismissed. Thereafter I obtained consent from my earlier counsel for change of vakalat and engaged the present counsel. My earlier counsel did not hand over the cause papers in the suits. The present counsel after filing search memo got the details of the suits and applied for necessary certified copies. Under the circumstances narrated above there is delay of 988 days in filing the petition to restore the suit in Tr.C.S.No.1144 of 2009 which was dismissed on 02.12.2016 for non-prosecution.'

3. The aforesaid articulation is reiterated by learned counsel in the hearing. As would be evident from the trajectory set out supra, there is no opposition or objection to this applications as respondents have not come forward to oppose this application, though they have been duly served and though they have entered appearance through counsel.

4. Having heard learned counsel for applicant, having perused the affidavit filed in support of the instant application and having been satisfied

that the delay has been sufficiently explained, the delay of 988 days in filing the instant application is condoned. Registry is directed to process the restoration application filed on 16.09.2019 vide Diary No.119072.

13.12.2019

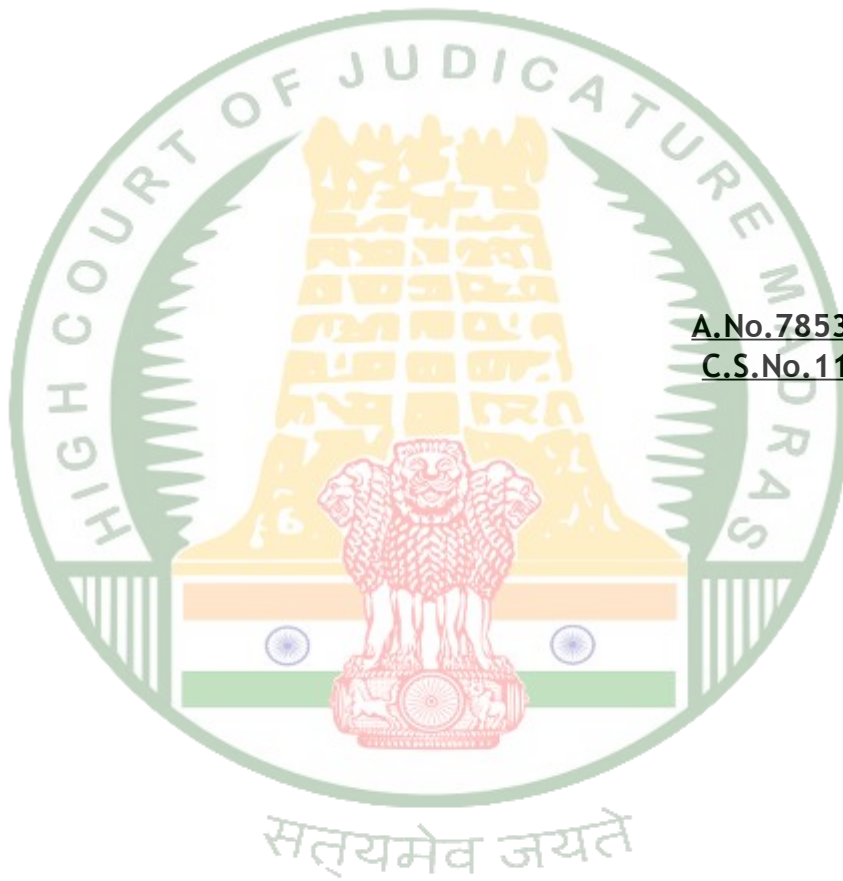
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