

**CMP.No.23121 of 2019 in
SA.No.362 of 2004**

G.K.ILANTHIRAIYAN,J.

This civil miscellaneous petition has been filed to condone the delay of 2739 days in filing the petition to restore the appeal which was dismissed for default on 16.02.2012.

2.The learned counsel for the appellant mainly contended that the earlier counsel did not inform the dismissal of the second appeal for default to the appellant as such there is a delay of 2739 days in filing the petition to restore the second appeal.

3.However, the learned counsel for the respondent submitted that the reasons stated in the affidavit filed along with the petition to condone the delay is not sufficient and also the reasons stated in the affidavit are not proper. Therefore, the mistake committed by the counsel cannot be the reason for condoning the delay in filing the petition restoring the second appeal. He also relied upon the judgment of this Court in the case of **Kaliaperumal Vs. Parasuraman** in **CRP.No.2725 of 2009** dated 21.10.2009, the relevant portion of which is extracted hereunder:

"10.It is to be borne in mind that the principles of law of limitation indeed will affect a particular party but while condoning the delay or otherwise the Court has to exercise its discretion in a judicious way. It is an axiomatic fact that a

litigant cannot remain idle that his counsel will inform him about the hearing date of a case and a litigant cannot pass on the blame to the counsel and that cannot be a ruse in regard to the condonation of huge delay of 3351 days in the matter in issue. Significantly, the affidavit in I.A.No.737 of 2007 filed by the revision petitioner is conspicuously absent as to why he has not contacted his counsel for a long gap of 10 years. Indeed, the law of limitation is based on the principles of sound public policy and a party who approaches the Court for seeking a relief viz., the decree holder cannot be allowed to be at the mercies or whims and fancies of the opponent as the case may be."

4.It is seen that the above judgment was held by this Court in Civil Revision Petition as against the interlocutory application pending the suit. Further, pending the suit when the parties are very much appearing before the trial court, he did not contact the counsel and as such this Court dismissed the petition to condone the delay. Whereas in the case on hand, the petition for condoning the delay has arisen after filing of second appeal. Normally to reach finality before this Court, it is taking much time, therefore probably for that reason the party did not contact the respective counsel.

5.Considering the above, this Court is satisfied with the reasons stated by the petitioner / appellant, since the earlier counsel did not inform the dismissal of the second appeal for default, there is a delay of 2739 days in filing the petition to restore the second appeal. Therefore, this Court is inclined to condone the delay of 2739 days in filing the petition to restore the second

appeal.

6. Accordingly, this civil miscellaneous petition is allowed on condition that the petitioner / appellant shall pay a sum of Rs.5,000/- (Rupees Five Thousand only) to the respondent directly or through his counsel on or before 10.01.2020.

7. Post the matter on 13.01.2020 "for reporting compliance".

06.01.2020

lok



WEB COPY

CMP.No.23121 of 2019 in
SA.No.362 of 2004

G.K.ILANTHIRAIYAN

lok



CMP.No.23121 of 2019 in
SA.No.362 of 2004

WEB COPY

06.01.2020