

C.M.P. No.16850 of 2019
in
S.A.No.SR13098 of 2014

P.T.ASHA,J

The respondent though served, has not entered appearance through counsel.

2. The petition has been filed to condone the delay of 568 days in filing the petition to restore M.P.No.1 of 2014 which had been filed to condone the delay of 749 days in filing the above unnumbered second appeal.

3. By order dated 20.10.2017, M.P.No.1 of 2014 was dismissed for default, since the learned counsel appearing for the petitioner earlier on 11.10.2017 filed a memo stating that he had no instructions from the petitioner/appellant and the memo was taken on file and the matter was directed to be listed on 13.10.2017 printing the name of the petitioner/appellant in the cause list. On 13.10.2017, the petitioner's name was printed in the cause list and when the matter was came up, there was no representation once again and the matter be posted on 20.10.2017 under the caption 'for dismissal' and consequently, on 20.10.2017, M.P.No.1 of 2014 was dismissed for default.

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4. Only a very sketchy affidavit has been filed in support of the present application, the petitioner has stated that he had no information from his erstwhile counsel about the listing of the case and that the representation made by the counsel on 11.10.2017 was totally erroneous. Taking into consideration the fact that the instructions of the respondent is not required for the counsel arguing the condone delay petition, this petition is allowed and the delay is condoned.

5.In the condone delay petition, there is a reference that the respondent has filed an execution proceedings. When the restoration application comes up, the appellant shall appraise the Court about the number and the stage of the Execution Proceedings and whether the possession has already been taken.

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26.08.2021

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