



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Wednesday, the Second day of March Two Thousand Twenty Two

PRESENT

THE HON`BLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HON`BLE MR.JUSTICE V.SIVAGNANAM

CMP.No.21352 of 2021

IN AS.No.989 of 2014

MR.S.CHENNAIAN, [PETITIONER]
S/O.B.L.SUBBU CHETTIAR, NO.10, 3RD CROSS
CO-OPERATIVE COLONY, KRISHNAGIRI TOWN AND TALUK,
KRISHNAGIRI - 635 001.

Vs

1 A.AKBAR BASHA [RESPONDENTS]

2 A.AMJATH BASHA

3 M.JULEKHA BI,
ALL ARE RESIDING AT
NO.51, 2ND CROSS BHARATHI NAGAR,
KRISHNAGIRI TOWN AND TALUK,
KRISHNAGIRI - 635 001.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased To condone the dely of 332 days in filing the above Restoration petition against the dismissal order dated 18.03.2019 passed by this Hon'ble Court in A.S.No.989/2014 (in CMP.No.21352 of 2021).

Order : This petition coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.GIRIJA VELMURUGAN, Advocate for the petitioner and of MR.K.VENKATASUBBAN, Advocate for the Respondents, the court made the following order:-

This Civil Miscellaneous Petition has been filed to condone the delay of 332 days in filing the petition to restore the appeal, which was dismissed for non prosecution on 18.03.2019.



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2.The learned counsel appearing for the petitioner, Mrs.Girija Velmurugan, would argue that the petitioner is a senior citizen, aged about 90 years and he was not informed about the dismissal of the appeal. He came to know about the same, after receiving notice in the execution petition in E.P.No.7 of 2020 and hence the delay.

3.Per contra, the learned counsel for the respondent, Mr.Venkatasubban, would argue that though the main appeal was listed under the caption 'for withdrawal' no one represented on behalf of the appellant and this Court has rightly dismissed the appeal for non-prosecution. Further, the delay has not been properly explained by the petitioner.

4.However, considering the fact that the present appeal arises out of the suit filed for specific performance and the parties should be given adequate opportunity to prosecute the case, this Court is inclined to allow this petition by imposing cost on the petitioner.

5.Accordingly, this petition is allowed on the condition that the petitioner shall pay the cost of Rs.5,000/- to the counsel appearing for the respondents, within a period of two weeks from today.

6.Post the main appeal on 17.03.2022.

-sd/-

02/03/2022

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

THE PRINCIPAL DISTRICT JUDGE,
KRISHNAGIRI.

Order

in
CMP.No.21352 of 2021

IN AS.No.989 of 2014

Date :02/03/2022

From 26.2.2001 the Registry is issuing certified
copies of the Interim Orders in this format
PA (10/03/2022)