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C.M.P.No.4538 of 2020
in
Rev.Appl.SR.No.10035 of 2020

C.V.KARTHIKEYAN,J.

This petition has been filed seeking to condone the delay of 216 days in filing petition to review the order dated 23.05.2019 in S.A.No.2004/2000.

2.The appellants in S.A.No.2004 of 2000 are the petitioners herein. They were the plaintiffs in O.S.No.134 of 1994, which was on the file of the Second Additional District Munsif Court, at Salem and which had been disposed of on 30.09.1999. They were the respondents in A.S.No.14 of 2000 on the file of the First Additional District Court cum Chief Judicial Magistrate, at Salem, which was disposed of on 07.08.2000.

3.Two points are urged, namely, the issue of resjudicata and the issue of limitation. It is complained they have not been properly considered by the learned Judge, who disposed of the second appeal.



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4.A perusal of the records show that the second appeal had been argued by both the counsels. As a matter of fact, the substantial question of law, on which the second appeal had been admitted was whether the decree in O.S.No.826 of 1985 had been obtained by playing fraud on Court. Further, an additional substantial question law had also been framed whether the first appellate Court had relied on extraneous material and had ignored relevant documents on the ground that they are self-serving in nature.

5.Both the substantial questions of law revolved primarily around facts. The first substantial questions of law revolved around the adjudication of O.S.No.826 of 1985 and whether the same had been obtained by playing fraud or by suppression of the material facts. The second substantial questions of law was connected with the first substantial question of law namely appreciation of evidence, by the first appellate Court. The learned single judge, after hearing the arguments of both sides and after relying on the precedents, had dismissed the second appeal.



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6. Now, it is urged that the issue of limitation and the issue of resjudicata require to be addressed. Both the said issues are mixed questions of facts and law. It is trite to point out that in a review application under Order 47 Rule 1 C.P.C., once there is necessity to apply mind and come to one of two possible conclusions, then review would not lie and only an appeal would lie.

7. This application has been filed to condone the delay of 216 days in filing the review application. It had been stated with respect to the delay, that after getting an opinion from the present counsel, a decision had been taken to file the review petition. This is not a proper reason to file a memo. Opinions will vary. The crucial aspect is whether there is an error apparent on the face of the record.

8. A reading of the judgment should show an error apparent on the face of record, which error should be rectified, as otherwise, it would cause prejudice to the parties. Reworking an entire issue on the basis of an advice of the counsel, may not be acceptable.



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9.I would not therefore condone the delay on that particular ground, that a counsel had advised that a review application should be filed and while giving such advice, a delay of 216 days had occurred.

10.Accordingly, the petition is dismissed.

sms

26.07.2022



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