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CMP.No.7213 of 2020

in

S.A.No.1443 of 2007

C.V.KARTHIKEYAN, J.

This Civil Miscellaneous Petition has been filed to condone the delay of 41 days in filing the petition to restore S.A.No.1443 of 2007, which was dismissed for non-appearance by the learned counsel for the appellant on 07.01.2020.

2.In the affidavit, it had been stated that the Second Appeal had been listed on 07.01.2020 and owing to old age, the deponent of the affidavit was suffering from viral fever and could not contact his counsel. It is also stated that the delay in filing restoration petition is neither willful nor wanton.

3.Mr.C.Ramesh, learned counsel entered appearance on behalf of the respondents filed a counter affidavit on behalf of the 1st respondent. It had been contended that the Second Appeal has no merits and it was filed only



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with an intention to protract the proceedings. It is also stated that by such protraction, both the 1st respondent and his tenant were not able to park their car in the space allotted to them under the Joint Development Agreement. It is also contended by Mr.C.Ramesh that a perusal of the notes papers reveals that the matter came up for hearing on various dates and finally came up on 03.01.2020 and on that date also, there was no representation on behalf of the appellant and then the matter was posted “for dismissal” on 07.01.2020 and since there was no representation on 07.01.2020, an order of dismissal was passed by this Court on 07.01.2020.

4.Heard the learned counsels.

5.I must state that the Second Appeal had been admitted and substantial questions of law had been framed. This naturally casts a burden on the Court to answer the substantial questions of law to give more clarity to the parties as to their respective stands. No doubt, the learned counsel for the appellant did not appear on 07.01.2020 or on the earlier hearing date on 03.01.2020 or on the earlier hearing dates, but a Second Appeal which has to be addressed on the substantial questions of law stands on a different footing from any other case, which deal with facts.



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6. With the above observations, I would condone the delay of 41 days in filing petition to restore the Second Appeal. This Civil Miscellaneous Petition is allowed.

7. However, an obligation is placed on the learned counsel for the appellant to bring up the Civil Miscellaneous Petition with respect to restore the Second Appeal, which is in CMP.SR.No.29807 of 2020 before this Court on 11.07.2022.

8. The Registry may devote some attention to number CMP.SR.No.29807 of 2020 and ensure that it is listed before this Court on 11.07.2022.

9. Call the restoration petition on 11.07.2022.

30.06.2022

smv

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