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C.M.P.No.11123 of 2022
in W.A.No. SR 49760 of 2022

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THE HON'BLE ACTING CHIEF JUSTICE
and
D.KRISHNAKUMAR, J.

(Order of the Court was made by the Hon'ble Acting Chief Justice)

This petition has been filed by the petitioner to condone the delay of 3253 days in filing the writ appeal against the order dated 26.4.2013 passed in W.P.No.14670 of 2003.

2. The first respondent herein has filed the writ petition to quash the order dated 3.4.2003 passed by the Special Commissioner and Commissioner for Land Administration confirming the order of the District Revenue Officer, Tiruvannamalai District.

3. The learned Single Judge, vide order dated 26.4.2013, directed the Tahsildar to inspect the land in question to ascertain the status of the land and thereafter pass suitable orders by providing pathway of 6 feet after hearing the objections from the writ petitioner and other persons concerned.



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4. Aggrieved by the order of the learned Single Judge, the petitioner herein has filed review application along with an application to condone the delay 29 days in filing the review application stating that some vital aspects had been omitted to be brought before the learned Single Judge while hearing the writ petition.

5. By order dated 17.3.2022, another learned Single Judge refused to condone the delay. However, in paragraph 4, it has been observed that if the petitioner has any grievance against the order of the learned Single Judge passed in the writ petition, the course open to him is to file an appeal. Consequently, the review application SR was rejected. Thereafter, the petitioner has filed the writ appeal with delay condonation application.

5. Learned counsel appearing for the petitioner submitted that substantial delay occurred on account of the pendency of the review



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application before this court and, therefore, it is to be excluded. He further submitted that if the delay on account of pendency of review application is excluded, there is only a short delay of 29 days in filing the writ appeal. He would submit that the 29 days delay is neither willful nor wanton and it was on account of communication gap between the counsel on record and the party. Therefore, the delay may be condoned.

6. Mrs. Rita Chandrasekaran, learned counsel appearing for the first respondent/writ petitioner, taking through the counter-affidavit filed, vehemently argued that the huge and unexplained delay of 3253 days, i.e., over 9 years, cannot be condoned by this court, as sufficient cause has not been shown by the petitioner. Moreover, the delay of 29 days in filing the review application has also not been satisfactorily explained by the petitioner.

7. We have considered the rival submissions and also perused the materials available on record.



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8. A bare perusal of the records shows that challenging the order of the learned Single Judge dated 26.4.2013 passed in W.P.No.14670 of 2003, the petitioner herein has filed a Review Application SR No.84679 of 2013 with an application to condone the delay of 29 days. The learned Single Judge of this Court, while dismissing the application for condonation of delay, in paragraph 4, has observed as under:

"4. This Court is at a loss to understand as to how the present review petition is maintainable. Order has been passed by this Court to provide 6 feet pathway. If the petitioner has any grievance with the said order, the course open to the petitioner is to file appeal and the petitioner cannot, under the guise of a review, once again reagitate the entire case for the purpose of obtaining orders, that would favour him. No error apparent on the face of the record has been pointed out by the petitioner to insist that a review application is maintainable. Such being the case, no occasion arises for condoning the delay in filing the petition for review."



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9. The petitioner has filed the present writ appeal with a delay of 3253 days. The major chunk of the delay is on account of the pendency of the review application. The review application SR filed in the year 2013 along with an application for condonation of delay of 29 days was rejected on 17.3.2022, observing that the course open to the petitioner is to file an appeal. The petitioner was unable to file the writ appeal in view of the pendency of the review application and only after rejection of the review application SR, he has filed the writ appeal with an application to condone the delay of 3253 days, which includes of 29 days delay that occurred due to the communication gap between the party and the counsel.

10. It is also trite law that once the review application is dismissed the doctrine of merger will have no application whatsoever. In the case on hand, as stated supra, while dismissing the condone delay application, the learned Single Judge rejected the review application SR. Thus, as per law, the petitioner is entitled to



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challenge the original order passed in the writ petition by way of writ appeal, which the petitioner has done in the instant case.

11. Since the major portion of the delay in filing the writ appeal is due to the pendency of the review application and sufficient cause having been shown for condoning the delay, in our considered view, the delay of 3253 days, including the period of 29 days that occurred due to communication gap between the party and the counsel, needs to be condoned for rendering substantial justice.

12. In view of the above, the delay of 3253 days in filing the writ appeal against the order dated 26.4.2013 passed in W.P.No.14670 of 2003 is condoned and the application is ordered. The Registry is directed to number the appeal, if it is otherwise in order, and list the same next week.

(T.R., ACJ.) (D.K.K.,J.)
10.10.2022

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