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C.M.P.No.3382 of 2022

in

SA.No.1923 of 2002

KRISHNAN RAMASAMY, J.

The petitioners who are the respondents 6 and 7 in SA.No.1923 of 2002, have come up with this petition to condone the delay of 657 days in filing the petition to set aside the ex-parte decree dated 05.02.2020 passed by this Court in the second appeal.

2. The learned counsel appearing for the petitioners submitted that the second appeal was allowed on 05.02.2020 in the absence of the petitioners herein. According to the learned counsel, due to second wave of Covid-19 pandemic situation and consequential declaration of lock down by the Government, the first petitioner could not enquire about the status of the case and she was also infected with Covid -19 disease; and that, the second petitioner is a resident of USA. The petitioners came to know about the disposal of the second appeal only recently and thereafter, they instructed their counsel to take steps by filing necessary petition to restore the appeal on record. Therefore, the learned counsel submitted that the delay occasioned in filing the petition to set aside the exparte decree is neither wilful nor wanton and the same may be condoned and that, the petitioners may be granted an opportunity to contest the case on merits.



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3. Stoutly opposing the relief sought herein, the learned counsel appearing for the first respondent filed a counter affidavit *inter alia* stating that not even an iota of sufficient cause has been shown by the petitioners to condone the delay in filing the petition for setting aside the exparte decree and they left the matter unrepresented, even their names having been printed in the cause list, upto the date of judgment and decree dated 05.02.2020 passed in the second appeal and nearly after 2 years of decree, that too, on receipt of the notice in E.P.No.1710 of 2021 on the file of the X Assistant City Civil Court, Chennai, they have come out with this condone delay petition. Further, the limitation period in the present case has well expired before the Hon'ble Supreme Court extended the period of limitation. Therefore, this petition is liable to be dismissed.

4. Upon hearing both sides, this court, considering the reasons that the first petitioner is a senior citition and she was affected with Covid-19 disease and the second respondent is held up at USA during the relevant point of time, and that, the petitioners succeeded in their attempts before both the courts below, and also having regard to the legal position that the question of limitation is not based on technical consideration, but is on the principles of public policy and equity; and the substantial justice is



paramount consideration and pivotal, is inclined to condone the delay in filing the petition to set aside the exparte decree passed in the second appeal.

5. Accordingly, the delay is condoned and this petition is ordered as prayed for. Registry is directed to number the petition to set aside the exparte decree, if it is otherwise in order and post the same for hearing on 02.11.2022.

26.09.2022

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