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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the Twenty Seventh day of June Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice P.VELMURUGAN

CMP(MD) No.1681 of 2017
IN
AS(MD) No.157 of 2008

TAMILNADU MERCANTILE BANK LTD.,
NO.51, EAST AVANI MOOLA ST, MADURAI,
REP.BY ITS CHIEF MANAGER,
MADURAI MAIN BRANCH. ... PETITIONER/PETITIONER/
APPELLANT/PLAINTIFF

Vs

1 M/S.K.B.MARITIME ENTERPRISES
A PARTNERSHIP FIRM REP BY ITS PARTNER,
K.SIVANANDAN

2 K.SIVANANDAN

3 K.SHANMUGA LAKSHMI

4 K.MAHESWARAN

5 K.RAVINDRAN

6 K.BALASUBRAMANIAN

7 INDHIRA DEVI

8 UMA DEVI

9 KRISHNAVENI ... RESPONDENT/RESPONDENTS
RESPONDENTS/DEFEDANTS

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to condone the delay of 510 days in preferring this Restoration Petition to restore the Respondents 1 to 3,5 and 7 to 9 on the file to AS.No.157 of 2008, which was dismissed for default on 19/08/2015 before this Honourable Court.

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PRAYER IN AS(MD)No.157/2008:

To prefer this Memorandum of Appeal against the judgment and Decree passed in O.S.No.255 of 2004 on the file of the Additional District Judge cum Fast Track Court No.2, Madurai dated 07.09.2007.

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ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.P.PETHU RAJESH, Advocate for the petitioner, the court made the following order:-

This petition is filed to condone the delay of 510 days in preferring the restoration petition to restore the appeal in respect of the respondents 1 to 3, 5 and 7 to 9 on the file to A.S.(MD) No.157 of 2008, which was dismissed against them.

2.The appeal was dismissed against the respondents 1 to 3, 5 and 7 to 9 only for non-payment of batta. The non-payment of batta is duly on the part of the learned counsel. The parties may not know as to whether the batta has been paid or returned or represented and subsequent batta has to be paid or not. It is the duty of the learned counsel that he has to follow it and properly advise the party and pay the batta. But, in this Court, in most of the cases, either the original batta or the subsequent batta has not been paid. Unfortunately, the Registry has also taken the appeal on file even without verifying the batta. The normal procedure is that on the date of filing the appeal, all the batta memos and adequate copy to the respondents shown in the cause list, should be furnished. Even as per the amended Code of Civil Procedure, if the batta memo is not properly furnished and adequate copies to the respondents shown either in the plaint or in the memorandum of appeal, are not furnished, despite the Registry has directed to comply with, either the plaint or the appeal can be rejected automatically.

3.This procedure has not been followed in this Court, even after amending the Code of Civil Procedure in the year 2002 and even after the decision of the Hon'ble Supreme Court in the case of Salem Advocates Bar Association of the year 2005. Even in this case, the batta has not been paid within the stipulated time. After 501 days, the present petition is filed.

4.This petition is also pending from 2017 without any progress. Though the reason stated in the accompanying affidavit is not satisfied, since because of some default or wrong advise of the counsel, the illiterate litigant would not be suffered. In most of the civil cases, most of the parties are illiterate litigants. But, unfortunately in our country, legal luminaries are not properly advising the parties and even after enactment of the Legal Services Authorities Act. The Legal Services Authority has also not properly or adequately given advise to them nor the legal aid to advise the public also.

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5.However, in order to give opportunity to the pa to contest the appeal, this petition is allowed on payment of cost of Rs.10,000/- (Rupees Ten Thousand only). The learned counsel for the petitioners is directed to pay the said cost. If any mistake is on the part of the parties, the learned counsel can recover the said amount from the parties. The said amount has to be deposited before the Registry to the credit of C.M.P(MD)No.1681 of 2017 in A.S (MD) No.157 of 2008 **on or before 11.07.2022,** failing which, this Petition shall stand automatically dismissed without any further reference to this Court.

6.List the matter on 12.07.2022 'for reporting compliance'.

sd/-
27/06/2022

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/07/2022

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

THE ADDITIONAL DISTRICT JUDGE CUM FAST TRACK COURT NO.2,
MADURAI.

COPY TO:

1 THE REGISTRAR (JUDICIAL)
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

2 THE SECTION OFFICER,
ACCOUNTS SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

3 THE SECTION OFFICER,
JUDICIAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.P.PETHU RAJESH, Advocate SR.No.6193

ORDER
IN
CMP(MD) No.1681 of 2017
IN
AS(MD) No.157 of 2008
Date :27/06/2022

cp
SA/VR/SAR.2/30.06.2022/3P/6C

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