



C.M.P.No. 9849 of 2023

in

S.A. No. 1573 of 1997

T.V. THAMILSELVI, J.

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This petition has been filed seeking to condone the delay of 1379 days in filing the petition to restore the above Second Appeal, which was dismissed for default on 22.04.2019.

2. Ms.P.T.Ramadevi, learned counsel for petitioners/appellants submitted that the above appeal was dismissed for default on 22.04.2019. She would submit that the appellants, who handed over the case has not given proper instructions and they are unaware of the proceedings and later they came to know about the dismissal of the appeal. But, there is a delay of 1379 days arose in filing to petition to restore the Second Appeal. Furthermore, she would submit that as both the erstwhile counsels on record appearing for appellants were elevated as Judges of this Court, she did not receive any vakalat and instructions to appear on behalf of appellants. So, the non-appearance of the counsel on record on that day as well as the delay in filing the petition to restore the second appeal is neither willful nor wanton. Therefore, she has filed the above petition praying to condone the delay.



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3. Mr. N.Manoharan, learned counsel for respondents appeared and raised strong objections stating that purposely, they have not proceeded with the matter and only with an intention to drag on the proceedings as well as to cause harassment to the respondents, they have filed this petition nearly about 4 years later. Furthermore, the reason for the delay is not properly explained and the reason assigned by them is not sufficient to condone the delay. Hence, he prayed to dismiss the petition.

4. But, the learned counsel for petitioners would submit that they are claiming title over the property, however all these years, they are enjoying the same and they are having valid defence to prove their claim. She would also submit that against the reversal findings of the court below, they have preferred this Second Appeal.

5. On seeing the facts, it reveals that the suit was filed seeking for the relief of declaration of title in respect of the suit property and the same was dismissed by the trial court. Challenging the same, the first appeal was preferred and the same was allowed. So, on a reversal findings, the above appeal was filed. Due to lack of communication, the petition to restore the



second appeal was not filed in time, however, they are having valid defence to prove their case. Therefore, on considering the fact that the appeal is pending from the year of 1997 and the plaintiffs filed a suit for the relief of declaration of title, to give one more opportunity and also to put an end to the litigation, this Court is inclined to condone the delay on condition that the petitioners shall pay a cost of Rs.4000/- payable to the learned counsel for 2nd respondent on or before 14.09.2023. Accordingly, this petition is ordered. On such deposit, Registry is directed to restore the above Second Appeal.

6. Post the matter on 14.09.2023.

30.08.2023

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