



C.M.P.No.33
A.S.Sr.No.95415 of 2016

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C.M.P.No.3364 of 2022
in
A.S.Sr.No.95415 of 2016
S.M.SUBRAMANIAM, J.

The learned counsel for the petitioner made a submission that the Appeal Suit against the judgment and decree passed in O.S.No.657 of 2007 dated 29.06.2016 was filed within the time limit contemplated.

2. After filing of the Appeal Suit, the papers were returned by the Registry, High Court for filing of written statement and the learned counsel for the petitioner states that their office was under the impression that the written statement was filed and the Appeal Suit was numbered. However, the office had inadvertently not verified the Appeal Suit number in the Registry. Subsequently, the learned counsel for the petitioner found that the Appeal Suit was not numbered and at the instance of the Appellant, he came to know about this fact. Thus, the delay in filing the present petition to restore the appeal is neither wilful nor wanton. Since the appeal was not numbered, it was listed before the Bench in the default list and it was dismissed. It is not in dispute that the case was listed in the default list before the Bench concerned and the Bench dismissed the petition for default and there is a delay in filing the petition to restore the Appeal Suit filed.



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3. The learned counsel for the petitioner made a submission that the defects were complied with and the delay is not wilful on account of the fact that they were under the *bonafide* impression that the Appeal Suit was numbered.

4. The mistake in this regard committed by the Advocate cannot be a reason to deny the right of filing an appeal by the appellant. The mistake was committed inadvertently by the lawyer, who filed the Appeal Suit and such a delay shall not affect the rights of the parties, since the Appeal Suit was filed within the time limit prescribed.

5. Considering the facts and circumstances, the delay in restoring the Appeal Suit filed in A.S.Sr.No.95415 of 2016, which was dismissed for default on 10.04.2018 stands condoned on condition to pay a sum of Rs.5,000/- to the Tamil Nadu State Legal Services Authority, High Court on or before 24.02.2023, failing which the Civil Miscellaneous Petition in C.M.P.No.3364 of 2022 stands dismissed automatically.

13.02.2023

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