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A.No.2888 of 2023

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in

C.S.No110 of 2022

Reserved on 23.06.2023	Delivered on 10.07.2023
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K.KUMARESH BABU,J.

The application is seeking to condone the delay of 27 days in filing an application to set aside the order, dated 13.02.2023.

2.Heard Ms.Manimegalai learned counsel for Mr.John soloman, the learned counsel appearing for the applicant and Mr.K.Bijaisundar, learned counsel appearing for the respondents 1 & 2.

3.The learned counsel appearing for the applicant would submit that the applicant herein had instituted the Suit invoking Section 92 of the Civil Procedure Code in respect of the first respondent society. She would submit that this Court by order dated 10.01.2023 on an application made by the respondents herein had allowed an amendment as regards to the address of the first respondent/first defendant and had directed the plaintiff to carry out the necessary amendment. Due to



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inadvertence, the learned counsel appearing for the applicant was not present on the date of hearing and therefore, he was not aware of the order passed by this Court and did not carry out the amendment. In view of the amendment fact that has not been carried out and also there was no appearance in the further hearing, this Court had dismissed the Suit for non-prosecution. Only after the learned counsel had sought to verify the status of the Suit, it had come to his knowledge that the Suit had been dismissed and immediately an application to set aside the order dated 13.02.2023, was sought to be filed and in filing the said application, there had an occasion of delay of 27 days. She would submit that it is neither willful nor wanton on the part of the applicant to allow the Suit to be dismissed for default. But only due to inadvertence of failure to note the same, the learned counsel for the applicant was not able to appear before this Court. Supporting affidavit of the counsel on record was also placed before this Court to substantiate their claim. Hence, he would seek indulgence of this Court to restore the said Suit by setting aside the order dated 13.02.2023.

4.Mr.K.Bijaisundar, learned counsel appearing for the defendant



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would vehemently oppose the application by contending that the applicants have not come to this Court with clean hands. He would submit that the applicant in the plaint wantonly showed a different address as regards to the first defendant society. The applicants claim to be the members of the first respondent and they cannot deny the fact that the first respondent's registered office is situated at Royapettah. Contrary to the aforesaid fact that they had shown the first defendant/first respondent as being represented by a Secretary and the address of the first defendant/first respondent is at Pallavaram. Therefore, the respondent herein had to move an application before this Court seeking for an amendment of the address of the first respondent, which had been also ordered by this Court with a further direction to the plaintiff to carry out amendment. Such amendment have not been carried out and even during further hearing and the learned counsel for the applicant had not been present. He had also relied upon the judgment of the Hon'ble Apex Court in the case of *Majji Sannemma Alias Sanyasirao vs. Reddy Sridevi and Ors.*, reported in *2021 SCC Online 1260* and in the case of *S.R.Vediappan & Ors., vs. S.P.Ramalingam & Ors.*, reported in *2020 SCC Online Madras 423*



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and contend that the Court could not legalize injustice by taking liberal or pragmatic view. He would further submit that the applicants have not shown any proper or sufficient cause for the delay.

5.I have heard the rival submissions made on either side and perused the materials placed on record.

6.This is an application to condone the delay of 27 days in filing the application to set aside the order of dismissal of the Suit for non prosecution and also they failed to carry out the necessary amendment as ordered by this Court. When an application for condoning the delay is made, the concerned party should have sufficient cause and should explain the delay of each day. The Courts shall also take a pragmatic and a liberal view in such cases, but should not be obliged to further injustice that may be caused to the defendant, if on the peculiar facts and circumstances of the case such condoning the delay would cause injustice to the other party. In the present case, the Suit had been instituted under Section 92 of the CPC for conducting elections to the first respondent society through a Court appointed officer. A reading of the plaint would show that there are various allegations as against the



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second respondent in claiming himself to be a President of the society.

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7.A counter affidavit had been filed by the respondent in the present application. From the averments of the pleadings in the counter it could be seen that the second respondent had been appointed as the President of the society in the Trust Board Meeting held on 11.03.1995. He had not given any further details as to who are the members of the Board of Trustees, when they were appointed, what was the period of office of such trustees. The bye-law of the society has been placed before this Court as the plaint document No.2. On a perusal of the said bye-laws, it could be seen that the term of office of the board of trustees, shall be life long.

8.From the aforesaid facts, it is clear that the second respondent herein is acting as the President of the society and he had not in clear terms made it known that who are the other members of the society and whether the society is functioning in consonance with the bye-laws of the society. Therefore, I am *prima facie* of the view that the allegations made in the plaint would have to be gone into by this Court and



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therefore if the delay is not condoned, it would amount to perpetuating the illegality, but however, the conduct of the applicants in not being diligent to follow up a litigation that too which had been initiated in public interest will have to be condemned.

9.In such view of the matter, cost of Rs.10,000/- is imposed upon them to be payable to the first respondent society within a period of two (2) weeks from the date of receipt of a copy of this order. Accordingly the Application is allowed as prayed for on payment of cost of Rs.10,000/-.

10.07.2023

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Index :Yes/No

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Pre-delivery Judgment in

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