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C.M.P.No.16042 of 2023

C.M.P.No.16042 of 2023
in
S.A.SR.No.54348 of 2023

P.T.ASHA, J.,

The above application is filed for condonation of delay of 308 days in filing the above appeal. In the affidavit filed in support of the above application, the appellant is the defendant in the Trial Court.

2. The plaintiff had filed the suit in O.S.No.307 of 2005 against the appellant herein for declaration and injunction restraining the defendants, their men, agents from interfering with her peaceful possession and enjoyment of the suit property. The suit was dismissed and the decree was reversed in the appeal by the Sub Judge, Ulundurpet in A.S.No.07 of 2018. The suit was filed by Ramayee and it is she who has challenged the dismissal of the suit by filing an appeal in A.S.NO.7 of 2018. This appeal was allowed by the judgment and decree on 13.12.2018.

3. The appellant had taken out steps to file the second appeal



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and has also filed condonation of delay petition for condoning the delay of 308 days. The appellant had impleaded Ramayee as the respondent. The court had ordered notice in the C.M.P.No.5046 of 2020 in SA.SR.No.15619 of 2020. It is only when the notice was despatched, that the appellant herein had come to learn that the said Ramayee died on 28.10.2019. Thereby, he took out an application to implead the husband of Ramayee and this application was allowed on 03.08.2022.

4. Since the appeal was filed against the dead person, this Court had permitted the appellant to withdraw the appeal with liberty to file a fresh second appeal. Accordingly, on 02.03.2023, the appellant had withdrawn the earlier appeal and immediately, the present appeal with an application for condonation of delay in filing has also been filed.

5. The learned counsel appearing for the first respondent vehemently opposes the application for condonation of delay stating that the appeal is filed against the dead person and the appellant



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cannot feign ignorance since he is none else than the nephew of Ramayee and that the delay has not been properly explained. He would also further submit that the certified copy of the decree has been applied for only after a year later.

6. Heard the learned counsels.

7. A perusal of the order passed by this Court in the earlier case i.e., C.M.P.No.5046 of 2020 in SA.Sr.No.15619 of 2020 would clearly show that this Court has permitted the appellant to file a fresh appeal and it is consequence of this order that the present appeal is filed. The record would further show that the certified copy of the judgment was applied in time and it was only the decree applied and obtained later. The contention that the appeal has been knowingly filed against the dead person has been explained by the learned counsel for the appellant as the case where they had not been provided with the correct instructions.



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7.The appellant has given reasons for the delay in paragraph nos.10 and 11 of the affidavit filed in support of the application wherein the appellant has stated that he had left for Dubai on 14.11.2018 and was unable to return to India in the light of the lockdown due to Covid-19 pandemic. Considering the facts and being satisfied with the reasons stated in the affidavit filed in support of this petition and the main objection of the respondent being that the appeal had been filed originally against the dead person, which argument pales into insignificance, in light of the order passed by this Court, this petition is allowed and the delay of 308 days in filing the above appeal in S.A.SR.No.54348 of 2023 is condoned.

8.Therefore, the Registry is directed to number the second appeal in S.A.SR.No.54348 of 2023, if it is otherwise in order.

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