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C.M.P.No.16197 of 2021

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in

S.A.No.1670 of 2008

C.KUMARAPPAN,J.

The Civil Miscellaneous Petition has been filed to set aside the order of dismissal for default dated 17.09.2021 and restore the S.A.No.1670 of 2008.

2. The learned counsel on both sides are present.

3. The learned counsel appearing for the petitioner would submit that the matter has come up for hearing on 17.09.2021 under the caption “For dismissal”. Even prior to that date, Mr.Pitty Parthasarathy, the learned counsel on record unfortunately died on 08.08.2021 and that was the only reason cited by the petitioner for restoration of the appeal.

4. Though the learned counsel for the respondent has stoutly objected the contention on the ground that the appeal has come up under the caption “For dismissal” even prior to that, the reason assigned in affidavit cannot be considered.



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5. However, the fact remains is that on the date when the appeal was dismissed the counsel was no more. Therefore, this Court is of the view that the reason put forth by the petitioner appears to be *bona fide*. Hence, this Court is inclined to allow this Civil Miscellaneous Petition.

6. Accordingly, this Civil Miscellaneous Petition is allowed. Registry is directed to list the second appeal in S.A.No.1670 of 2008 on 09.11.2023.

18.10.2023

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