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C.M.P.No.22737 of 2023

**C.M.P.Nos. 22737 and 22736 of 2023**  
**and**  
**S.A.SR.Nos. 88009 and 88008 of 2021**

**P.T.ASHA, J.,**

The above applications are filed for condoning the delay of 778 days in filing the above second appeals. The appeals are filed by the legal representatives of the deceased first defendant Ramakrishnan in O.S.No.98 of 2008. The first respondent in these appeals had filed the suit in O.S.No.98 of 2008 for a declaration and subsequently injunction in respect of the 'B' schedule property and for a mandatory injunction directing the defendants to remove the construction that has been put up thereupon.

2. The deceased first defendant in O.S.No.98 of 2008 has filed a suit in O.S.No.172 of 2008 for a bare injunction. These suits have been tried together and by the judgment and decree dated 01.02.2016, the learned Additional District Munsif, Thirukoilur, dismissed the suit filed by the said deceased Ramkrishnan in O.S.No.172 of 2008 and decreed the suit in O.S.No.98 of 2008.

3. Challenging the said judgment and decree, the said



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Ramakrishnan had filed A.S.No.128 of 2016 (which is the subject matter of the second appeal in S.A.SR.No.88009 of 2021) and A.S.No.127 of 2016 (which is the subject matter of the second appeal in S.A.SR.No.88008 of 2021). The appeals were also dismissed and after the judgment and decree, the said Ramakrishnan died and his legal representatives have filed these second appeals. However, there is delay of 778 days in filing these second appeals.

4. The reason for this delay is stated to be that the petitioners/appellants were not aware about the proceedings as it was Ramakrishnan, the husband of the first petitioner/appellant and father of the second petitioner/appellant who was handling the case. The said Ramakrishnan died on 17.11.2019 and it was only when the petitioners here received the notice in E.P, they had obtained copies of the papers and contacted the counsel and the clerk attached to the counsel office would submit that he had attempted to contact Ramakrishnan to inform about the receipt of certified copies, however his phone calls were unanswered. Thereafter, Covid-19 lockdown set in, as a result of which, the



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petitioners/appellants were not able to immediately contact their counsel in Chennai which caused the said delay.

5. The respondents had filed a counter and the main contention raised by them is that the said Ramakrishnan had died nearly 11 months after the judgment and decree in First Appeals and therefore, the reason given lacks *bonafide* and the delay should not be condoned.

6. Heard the learned counsel on either side.

7. The perusal of the order copy would indicate that the copy application was filed in time and the same was made ready in the month of May 2019. In the affidavit filed in support of the condone delay petition, the petitioners had stated that the clerk attached to the office of their lawyer at Thirukoilur has been trying to contact the deceased Ramakrishnan who had not responded. It is also stated that it was only the deceased Ramakrishnan was conducting the case.

8. The reason appears to be genuine and taking into account the



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fact that the said Ramakrishnan had died within months of pronouncing of the judgments, the reason appears to be *bonafide* and consequently the objection of the respondents has to necessarily be rejected and these petitions are allowed and the delay of 778 days in filing the above appeals in S.A.SR.Nos.88009 and 88008 of 2021 are condoned.

9. The Registry is directed to number the appeals, if it is otherwise, in order and list the same for admission.

**20.11.2023**

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