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CMP No.19005 of 2023 in
OSA (cad) SR 66878 of 2022

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D.KRISHNAKUMAR, J.

AND

P. DHANABAL, J.

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This petition has been filed to condone the delay of 367 days in representing the original side appeal.

2. In paragraph No.3 of the additional affidavit filed by the petitioners have stated that, there was a confusion on the court fee, whether it is to be paid on the value of the original petition and while filing the appeal, they have paid deficit court fee and hence the appeal papers were returned for want of payment of proper court fee. However, since the matters have not been properly followed by the junior counsel as well as the clerk, they could not able to represent the papers in time.

3. To the above said petition, counter affidavit has been filed by the counsel for the first respondent, in which, it is stated that, in the earlier affidavit, the petitioners have stated that due to the ailment of their counsel, the matter has not been followed up and hence, there occurred the delay. But, in the additional affidavit, they have



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completely changed the reason itself by stating that, the counsel on record has not properly followed up the matter. It is further stated in the affidavit that, the same counsel on record appearing for the petitioners has attended the other matters and for the same, the details have also been given in the counter affidavit.

4. However, it is relied upon by the petitioners that, as per the settled Supreme Court law in *Rafiq and another Vs. Munshilal and another, 1981, SCR(3) 509*, due to the fault on the part of the counsel, litigant should not be suffered.

5. Therefore, considering the above, we inclined to condone the delay. However, since the petitioners have not given the correct details, for which the appeals were returned, we inclined to impose costs to be paid by the petitioners to the respondents, for allowing the petition.

6. It is stated by the learned counsel for the petitioners that already, the appeal claim, as against the third and fourth respondents are given up.



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7. Accordingly, this petition is allowed on payment of cost of Rs.10,000/- each (totalling to Rs.20,000/-) to the first and second respondent, through their respective counsel, within two weeks from today.

(D.K.K., J.) (P.D.B., J.)

15.11.2023

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