



*C.M.P.Nos.6896 and 6897 of 2023
in S.A.No.1724 of 2004*

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V. LAKSHMINARAYANAN,J.

These applications are filed to set aside the dismissal order made on 20.04.2018 and to restore the Second Appeal in S.A.No.1724 of 2004, and to condone the delay of 1555 days in filing the restoration petition to restore the appeal on the file.

2. The case of the petitioners is that the appeal has been listed for hearing before this Court on 20.04.2018. On that date, the appellants were not informed of the proceedings having been kept pending by the counsel who appeared for the petitioners earlier. In the mean time, Mrs.Annadayee Ammal was terribly sick and therefore was not in a position to give instructions to her counsel. The first respondent and the appellant are close relatives and the first respondent was aware of the fact that Annadayee Ammal was bedridden and was not in a position to give instructions to her counsel. Consequently the counsel reported no instructions and this Court was pleased to dismiss the appeal for default on 20.04.2018 to restore the said Second Appeal. Hence the present applications to condone the delay and to restore the appeal have been filed.



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3. Mr.N.K.Vaanan appearing for Mr.Raamesh Kumar, learned counsel for the respondents would strongly oppose the applications stating every day's delay has not been explained and taking advantage of the litigation the parties are creating a confusion in the suit properties. He would state that the appellants cannot blame their counsel and wriggle free from their responsibility of pursuing the appeal.

4. I have gone through the affidavit and heard the arguments on either side. The delay has been explained on the ground that Annadayee Ammal was bedridden and also to the fact that this was well within the knowledge of the respondents. The petitioners can only take such steps before the High Court like engaging a counsel and moving the appeal. She cannot be expected to be present on everyday of hearing. In this case, it is not possible for her to be present because she was sick and unfortunately for her, her counsel had also reported no instructions. This Court being left with no other option, had dismissed the appeal for default. The appellants are now ready to pursue the appeal and there has been a delay.



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5. I am satisfied with the reasons given in the affidavit and I am guided by the principle of the Hon'ble Supreme Court in **Rafique and Another. Vs. Munshi Lal & Another(AIR 1981 SC 1400)**. Therefore, C.M.P.No.6897 of 2023 is allowed on payment of Rs.2,500/- (Rupees Two Thousand Five Hundred only). Consequently, C.M.P.No.6896 of 2023 is also allowed on the same terms. The petitioners shall pay a sum of Rs.5,000/- (Rupees Five Thousand only) on or before 02.06.2023. Call on 05.06.2023. In case the cost is not paid on or before that date, the C.M.Ps shall stand automatically dismissed without further reference to this Court.

28.04.2023

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