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C.M.P.No.16084 of 2022
in A.S.S.R.No.95723 of 2022

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S.VAIDYANATHAN, J

and

J.SATHYA NARAYANA PRASAD, J

This petition has been filed to condone the delay of 79 days in filing the First Appeal (Appeal Suit).

2. According to the petitioner, there was a decree on 21.10.2021 in O.S.No.2399 of 2021 being filed for recovery of money. On coming to know that the suit in O.S.No.2399 of 2021 was transferred to City Civil Court, Chennai, a letter was presented by the learned counsel for the petitioners herein, to the plaintiff's counsel on 03.08.2022, intimating the death of the first defendant and the details of the legal heirs. Further, a copy of the judgment in O.S.No.2399 of 2021 was made ready by the Court only on 18.08.2022.

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3. Furthermore, the period during which the delay was directed to be excluded by the Supreme Court was between 15.03.2020 and 28.02.2022 being the Covid-19 Corona Pandemic situation. Thus, in the case on hand, the delay has occurred in the interregnum.

4. Learned counsel for the first respondent/plaintiff has vehemently opposed this condone-delay-petition on the ground that the judgment and decree in O.S.No.2399 of 2021 was rendered on 21.10.2021, which was during the Covid-19 Corona Pandemic situation and that the petitioner has taken more time to file application for obtaining the judgment copy in the said suit in O.S.No.2399 of 2021 and that the plaintiff being widow, has been made to languish without enjoying the fruits of the decree passed in the said O.S.No.2399 of 2021.

5. Heard both sides and perused the materials available on record.

6. It is to be noted that the Supreme Court, taking suo-motu cognizance of the situation arising out of Covid-19 Pandemic and in exercise

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of the powers conferred under Article 142 read with Article 141 of the Constitution of India, in *Suo Motu Writ Petition (Civil) No.3 of 2020*, by order dated 23.03.2020 (*In Re: Cognizance for extension of limitation*), ordered that the period of limitation in all proceedings irrespective of the limitation prescribed under the General Law or Special Laws, whether condonable or not, shall stand excluded with effect from 15.03.2020 till further orders to be passed by the Apex Court. The relevant portion of the said order passed by the Apex Court is extracted below:

"This Court has taken suo motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions / applications / suits / appeals / all other proceedings within the period of limitation prescribed under the general law of limitation or under special laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this



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Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings."

7. Thereafter, the Supreme Court in the said Suo Motu Writ Petition (C).No.3 of 2020, by order dated 10.01.2022, has extended the delay from 15.03.2020 to 28.02.2022 and accordingly, the delay during the lock-down period was extended upto 28.02.2022.

8. In the above context, it is useful to extract the relevant portion of the said order dated 10.01.2022 passed by the Supreme Court:

"5.

(iv) It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed



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under Sections 23(4) and 29(A) of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."

9. Moreover, in the case on hand, a reading of the affidavit filed in support of the condone-delay-petition makes it clear that, in the meantime, the first defendant had died and the legal heirs of the deceased first defendant had filed the present Appeal Suit (First Appeal) before this Court.

10. Since this First Appeal itself has got to be heard on merits, and as to whether any amount has to be deposited or not, by the parties, in the present suit for recovery of money, will have to be considered only at the time of hearing the First Appeal. Hence, we find that the delay of 79 days has got to be condoned and the Appeal Suit (First Appeal) has to be heard

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on merits. No prejudice would be caused to the first respondent/plaintiff, if the Appeal Suit itself is heard on merits.

11. Hence, for the foregoing reasonings, the delay is condoned.

12. Registry is directed to number the First Appeal (Appeal Suit), if it is otherwise in order, and list the First Appeal for hearing on 07.02.2023.

(S.V.N., J) (J.S.N.P., J)
31.01.2023

cs

Registry is directed to issue order copy on or before 06.02.2023



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