



A.No.4805 of 2023
in C.S.DR.No.27543 of 2017

R.N.MANJULA, J.

This application has been filed to set aside the order passed by the learned Master Court in A.No.3543 of 2023 dated 21.07.2023.

2. The learned counsel for the applicant submitted that an application has been filed by the applicant in A.No.3543 of 2023 before the learned Master for condoning the defect in presenting the case papers in the above Civil Suit which is intended to be filed for recovery of money; after the suit was returned for certain defects, it was not represented and thereafter there was a delay of nearly six years; when an application was filed to condone the delay in representation, the learned Master had dismissed the application on the observation that the suit is barred by limitation; however, the limitation expires on 10.05.2020 if the period of limitation is calculated from the last transaction; but the fact remains that on the date when the suit was presented, the suit was within the period of limitation; so it is not appropriate on the part of the learned Master to arrive at a conclusion that the suit was barred by limitation, as it was not represented within time. It is further submitted by the learned counsel for the applicant that the order of the learned Master is against the



well settled principle of law relating to condoning the delay in representation; the merits of the application has not been considered properly; the reasons stated by the learned Master for dismissing the application is not acceptable and hence the order passed by the learned Master has to be set aside.

3. The applicant had stated that his erstwhile counsel died and hence he was not in a position to contact his counsel and he was under the impression that the suit was filed and it is pending. Normally when the suits are returned, the technical defects for returning the plaint would be complied by the counsel of the parties and the parties might not be aware of those technicalities. So it is quite natural on the part of the applicant to think that everything was going fine in the Court and his suit would have got filed. Unfortunately the counsel engaged by the plaintiff is said to have suffered Brain tumor and he died thereafter. It is understandable from the reasons stated by the applicant that there are some extraneous circumstances which caused the delay.

4. In view of the above stated reasons, I feel it is appropriate to



allow this application by setting aside the order passed by the learned Master.

5. Accordingly, this application is allowed and the order passed by the learned Master in A.No.3543 of 2023 dated 21.07.2023 is set aside.

15.09.2023

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