



C.M.P.No.21926 of 2023
in
S.A.Sr.No.107526 of 2023

P.T.ASHA.J

The above petition is filed for condoning the delay of 2164 days in filing the second appeal.

2. The respondents 1 and 2 had entered appearance through a counsel. Respondents 3 to 5 have remained ex-parte. A Memo dated 16.11.2023 has been filed seeking to dispense with the notice to respondents 3 to 5, as they have remained *ex-parte*. The Memo is taken on file and the notice is dispensed with to respondents 3 to 5. Respondents 1 and 2 herein are the plaintiffs before the trial Court and the contesting respondents.

3. The petitioner/appellant has taken out this petition for condoning the delay of 2164 days in filing the second appeal. The



petitioner is the third defendant in the suit O.S.No.163 of 2010 on the file of the Additional Subordinate Court, Tiruvannamalai which was filed by respondents 1 and 2 herein for declaration, partition and delivery of possession. The petitioner, now before this Court, had been arrayed as the third defendant and he had filed a written statement and contested the suit. After an elaborate trial, the suit was dismissed by judgment and decree dated 18.01.2013. Against this judgment and decree, respondents 1 and 2 have preferred A.S.No.12 of 2013 on the file of the District Munsif Court, Tiruvannamalai.

4. It is the contention of the petitioner that he had engaged the services of an Advocate for entering appearance on his behalf and prosecuting the appeal. However, the learned counsel had not appeared and contested the appeal and thereafter, the lower appellate Court by judgment and decree dated 03.05.2017 had



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reversed the judgment and decree in O.S.No.163 of 2010.

5. The petitioner would submit that on coming to know about the *ex-parte* decree, he has taken out an application under Order 41 Rule 21 of C.P.C in I.A.No.41 of 2017 in A.S.No.12 of 2013 to condone the delay of 10 days in filing the application to re-hear the appeal, since the judgment is an *ex-parte* judgment passed without hearing the petitioner herein. The judgment was passed during the vacation. Unfortunately, the learned Principal District and Sessions Judge, Tiruvannamalai, by order dated 03.05.2017 had dismissed the said application. Against this dismissal order, the petitioner appears to have filed C.R.P.No.4040 of 2017 on the file of this Court. Though this Court has admitted the revision, ultimately, by order dated 11.01.2023 this Court had dismissed the appeal and upheld the order passed by the lower appellate Court. A review was also filed in the revision as there were some adverse findings



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on the same and the same is yet to be numbered. Meanwhile, the petitioner has been advised to file an appeal, as the judgment under challenge is the cryptic order that has been passed by the lower appellate Court. It also transpires that, on the strength of the dismissal of the civil revision petition, respondents 1 and 2 had tried to enforce the judgment and decree of the appellate Court. Therefore, the petitioner has come forward with the above second appeal with the delay and the reasons for the delay have been set out supra.

6.Heard Mr.Navin, learned counsel for the petitioner/appellant and Mr.S.Kaithamalai Kumaran, learned counsel for respondents 1 and 2 and perused the materials available on record.

7.This is an unfortunate case where the proceedings had



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dragged on for over 10 years only because the respondents now before this Court had not given their no objection for allowing the application for condoning the delay of 10 days in filing the application to re-hear the appeal particularly when the judgment had been pronounced during the vacation. Be that as it may, the records would show that the petitioner herein had succeeded before the trial Court and it was respondents 1 and 2 herein who had preferred the appeal. The judgment and decree in A.S.No.12 of 2013 have been passed on 03.05.2017 which falls during the vacation. Immediately, steps have been taken to file an application under the provisions of Order 41 Rule 21 of Code of Civil Procedure. However, calculated from the date of judgment, there appears to be a delay of 10 days. This application has been dismissed and confirmed by this Court in revision. Therefore, while diligently prosecuting the application as provided under law, the delay in filing the first appeal has crept in. Considering the fact



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that the delay in filing the application to set aside the ex-pare decree was only 10 days, it is but natural for the petitioner/appellant to have been lulled into believing this delay would be condoned without opposition. However, things did not work that way. As a result, the appeal has been filed with a delay.

8.A mere perusal of the judgment and decree of the first appellate Court would clearly show that the same is a totally non-speaking judgment and suffers from a total non-application of mind. Therefore, considering the fact that the petitioner/appellant has been diligent in prosecuting the case and as the judgment in question leaves much to be desired, the delay is condoned and this petition is allowed. The Registry is directed to print the name of Mr.S.Kaithamalai Kumaran, learned counsel for respondents 1 and 2 when the matter is listed for admission.



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