



A.Nos. 4518 & 4519 of 2023

in

C.S. Sr.No. 34046 of 2022

P.T.ASHA, J.

The above applications have been filed seeking the following reliefs:

“A.No.4518 of 2023 is filed to condone the delay of 433 days in re-presenting the plaint in D.No.34046 of 2022 into the file of this Court.

A.No.4519 of 2023 is filed to condone the delay of 490 days in paying the deficit Court Fee of Rs.5,45,000/- as per order dated 28.04.2022 and consequently grant leave to the applicant to prosecute the suit in accordance with law.”

2. A common affidavit has been filed for the said reliefs. The facts necessary for disposing off these applications are briefly set out herein below and considering the fact that a common affidavit has been filed a common order is passed.



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3. The plaintiff / applicant has filed the mortgage suit seeking recovery of a sum of Rs.2,75,00,000/-. It is the case of the applicant that the 1st respondent had availed a financial facility in the month of March 2011 for a sum of Rs.24,00,000/-. To secure loan, he had also offered his property at Marakkanam Village, Tindivanam as a security and created a mortgage by deposit of title deeds dated 21.03.2011 registered before the Sub Registrar, Marakkanam as Doc. No. 844 of 2011. The deposit of title deeds was done at the applicant's office at Nungambakkam, Chennai and later the memorandum evidencing the deposit has been registered.

4. The 2nd respondent had thereafter availed a loan from the applicant to the tune of Rs.1,50,00,000/- on 22.04.2016. The security of the properties already mortgaged by the 1st respondent was extended to this loan. This loan agreement was also registered in the applicant's office at Nungambakkam, Chennai. The respondents together have thereafter borrowed a further sum of Rs.25,00,000/- on 26.04.2016 and Rs.50,00,000/- on 09.05.2016.



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Once again the security of the mortgage earlier created was extended to this loan. Since the respondents had not come forward to clear the dues, the applicant has come forward with the suit in question.

5. The suit was filed into the Court on 31.03.2022 and the Registry had returned the plaint and document for compliance of certain returns, one of which was payment of deficit Court fee. Since there was an issue with reference to the amount of Court fee payable, the Registry had placed the matter before the Court for maintainability. This Court after hearing the arguments, by order dated 28.04.2022 directed the applicant to pay deficit Court fee of a sum of Rs.5,45,000/- in compliance with the amended Madras High Court Fee Rules. The Registry had returned the plaint on 13.05.2022.

6. After taking the return on 01.06.2022, it appears that the entire bundle had been misplaced at the counsel's office and their efforts to trace the bundle went in vain. Thereafter, it was only in



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the last week of July 2023 that the bundle could be traced and the same was re-presented with the delay of 433 days. Therefore, two applications have been filed, one for condoning the delay in re-presentation and the other for condoning the delay in payment of deficit Court fee.

7. Heard the learned counsel for the applicant.

8. It is seen that originally the bundle had been placed for maintainability before this Court with reference to Court fee and this Court had directed the applicant to pay the deficit Court fee. The applicant has also taken the return of the bundle. It is stated that the bundle had been misplaced with the disposed off bundle in the counsel's office and it had taken some time to trace out the bundle. Such instances do happen in Lawyer's office and the party cannot be put to any hardship. Further, the institution of the suit is not barred by limitation and even the delay in payment of Court fee is also well within the period of limitation.



9. The reasons given in the affidavit filed in support of the applications explain the delay. Therefore, considering the fact that sufficient reasons have been given the delay is condoned.

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