

C.M.P.Nos.20264 & 20506 of 2023

in

S.A. Sr. No.109220 of 2023

P.T.ASHA, J.

The above application is filed for condoning the delay of 427 days in filing the Second Appeal. The reasons that has been given for the delay which is set out in paragraph no.4 are as follows:

“4.The suit was vehemently contested by me. However it was decreed as stated above. I filed first appeal in time in A.S. No. 37 of 2019. Meanwhile there was the pandemic of Covid-19 affecting the normal life, during which I lost touch with the counsel on record with regard to the status of the proceedings. In about August, 2022 I learnt through E-Court that my appeal was already dismissed in 2021. After making contact with my counsel on record who had failed to communicate to me the outcome of the appeal and had the confirmation of the dismissal. In order that further course of action is taken smoothly I instructed him to apply for a certified copy through which was made on

*22.08.2022. The certified copy was obtained on
13.09.2022”*

The petitioner / appellant therefore prayed for condoning the delay.

2. The petitioner is the defendant in the suit O.S.No.110 of 2011 on the file of the District Munsif, Arakonam. The plaintiffs / respondents have filed a counter inter alia contending that the reasons given for the delay is absolutely false. They would contend that after the decree in the suit they have filed I.A.No.509 of 2018 in O.S.No.110 of 2011 for appointment of an Advocate Commissioner to divide the property by metes and bounds. The petitioner herein has entered appearance through counsel in the said proceedings and in the said proceedings, the petitioner herein had made his submissions on 11.06.2019.

3. Meanwhile, the First Appeal was filed by the petitioner in A.S.No.37 of 2019 on the file of the Sub Court, Arakonam,

wherein, the petitioner had challenged the preliminary decree in O.S.No.110 of 2011. Ultimately, the same was dismissed by Judgement dated 13.08.2021.

4. The learned counsel appearing for the respondents would submit that after the dismissal of the First Appeal, a memo was filed in I.A.No.509 of 2018 in O.S.No.110 of 2011 bringing to the notice of the Court about the dismissal of the First Appeal. Therefore, it is his contention that the petitioner was aware about the dismissal of the First Appeal in A.S.No.37 of 2019 even as early as on 04.09.2021. Therefore, the statement that the petitioner had come to know about the dismissal only in the month of September 2022 that too when he had cross checked the same through their counsel is absolutely false.

5. It is also brought to the notice of the Court that the Advocate Commissioner has already inspected the property on

18.08.2022 after issuing notice to both the parties and the petitioner and his counsel were present. Once again this would clearly prove that allegations contained in the affidavit for condoning the delay are absolutely false. He would therefore pray for the dismissal of the petition.

6. Heard the learned counsels on the either side.

7. The suit in question is a partition suit and the only defense taken by the petitioner / defendant is that the sister who is the wife of the 1st plaintiff and the mother of plaintiffs 2 to 4, Jyothi had relinquished her interest in the property in favour of the defendant. However, there is no document to prove the same and both the sisters are no more.

8. It is also seen that when the application had been listed on 27.09.2023, this Court had directed the parties to appear for

Mediation, which of course been returned with failure report. Though the reasons for the delay has not been properly given, considering the relationship between the parties, the fact that the suit is a partition suit and considering the fact that the defendant / appellant has to show substantial question of law for admitting the appeal, the delay is condoned.

9. The Registry is directed to number the appeal if otherwise in order and **post the matter for admission on 15.12.2023.**

10. The Registry is also directed to print the name of Mr.Ralph V.Manohar at the time of admission.

11. In the light of condonation of the delay, no further orders are required in C.M.P.No.20506 of 2023 and is accordingly closed.

12.12.2023

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P.T.ASHA, J.

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C.M.P.No.20264 of 2023

12.12.2023