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CMP.No.20367 of 2022
in S.A.SR.No.123380 of 2022

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G.K.ILANTHIRAIYAN, J.

This civil miscellaneous petition has been filed to condone the delay of 803 days in preferring the above second appeal against the judgment and decree dated 26.02.2020 made in AS.No.30 of 2018 on the file of the Principal Subordinate Judge, Villupuram, thereby partly reversing the Judgment and Decree dated 13.04.2018 made in O.S.No.133 of 2005 on the file of the Additional District Munsif Court, Villupuram.

2. The petitioners are the defendants in the suit filed by the respondents in O.S.No.133 of 2005 on the file of the Additional District Munsif Court, Villupuram. The said suit was filed for a bare injunction in respect of the suit properties. After appointment of Advocate Commissioner and on receipt of his report, the prayer was amended into one for declaration and recovery of possession and mandatory injunction to demolish the construction put up by the appellants in the 2nd item of the suit schedule property. The said suit was partly allowed. Aggrieved by the same, the respondent preferred an appeal suit and the same was also allowed and thereby the suit was decreed as prayed for by the judgment and decree dated 26.02.2020. However, the petitioners could



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not file this appeal in time.

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3. A perusal of affidavit filed in support of condone delay petition revealed that the first petitioner has filed sworn affidavit stating that she has suffered an illness and unable to move from her house since she was bedridden for four months due to age old ailments she could not make necessary arrangements to file this appeal. Thereafter, in the first week of November 2022 only, she took steps to file an appeal before this Court with a delay of 803 days in preferring the second appeal.

4. The first respondent filed counter affidavit wherein he contended that on the strength of the judgment and decree passed in AS.No.30 of 2018, they filed an Execution Petition in E.P.No.01 of 2021 on 20.01.2021. In the Execution Petition, the petitioners were duly served with notice on 01.04.2021 and on receipt of the said notice, the first petitioner herein appeared before the Execution Court and filed a memo with xerox copy of family card for engaging a counsel for her. Though notice was served on the second petitioner, she was absent before the Execution Court. Thereafter, the first respondent herself appeared before the Execution Court on 08.07.2021 and 07.10.2021 and



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sought time for engaging a counsel on her behalf. On 12.10.2021, she engaged a counsel before the Execution court and also filed vakalat. Thereafter, the Execution Petition was repeatedly adjourned for filing counter till 05.07.2021 and finally it was posted on 25.07.2022 for filing counter. On 25.07.2022, the first petitioner herein filed counter stating that she filed second appeal before this Court and the same is yet to be taken on file. Thereafter, the petitioners herein applied for certified copy of the judgment and decree passed in A.S.No.30 of 2018 on the file of the Principal Subordinate Court, Villupuram, on 20.10.2022 and the certified copy of the judgment and decree were received by the petitioners in the month of November 2022.

5. That apart, the respondents also filed Caveat Petition before this Court on 09.03.2021 itself. In the said Caveat Petition, the petitioners were also duly served with notice. Therefore, the petitioners had knowledge about the judgment and decree passed in A.S.No.30 of 2018. In fact, the first petitioner herein appeared before the Execution Court in person. Therefore, she has filed a false affidavit before this Court and stating frivolous reasons by using the Covid-19 pandemic circumstance. Therefore, all the averments made in the



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affidavit are utter false and as such, the petitioner had not stated sufficient reasons to condone the huge delay of 803 days.

6. In so far as, the second petitioner is concerned, she has not suffered any illness and there is absolutely no explanation for the delay of 803 days from her. Therefore, this Court is not inclined to condone the delay of 803 days in preferring the above second appeal against the judgment and decree dated 26.02.2020 made in A.S.No.30 of 2018 on the file of the Principal Subordinate Judge, Villupuram.

7. Accordingly, the civil miscellaneous petition stand dismissed.

25.01.2023

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Note : Issue order copy on 27.01.2023.



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