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C.M.P.No.23223 of 2022

C.M.P.No.23223 of 2022
in S.A.SR.No.135021 of 2022

A.D.JAGADISH CHANDIRA, J.

This petition has been filed to condone the delay of 991 days for filing the Second Appeal.

2.It is the case of the petitioner that he had filed Original Suit in O.S.No.6549 of 1996 before the VIII Assistant Judge, City Civil Court, Chennai to declare the sale deed dated 02.03.1990 executed by the second and third defendants in favour of the first defendant in respect of their alleged 5/6th share in the suit property as null and void and direct the defendants to execute and register a sale deed in respect of their interest and share in the schedule mentioned property and also for permanent injunction restraining the defendants, their men, agents, servants or anybody else claiming through them from in any way interfering with the peaceful possession and enjoyment of the suit schedule mentioned property. The suit came to be dismissed by the learned VIII Assistant Judge, City Civil Court, Chennai, by judgment and decree dated 28.04.2018.



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3. Against the said judgment and decree, the petitioner had preferred First Appeal in A.S.No.416 of 2018 before the VI Additional Judge, City Civil Court, Chennai and the appeal was partly allowed.

4. While dismissing the prayer for declaration, the Appellate Court had granted relief of injunction, against which, the present Second Appeal has been filed.

5. It is the case of the petitioner that the first appeal has been partly allowed in respect of relief of injunction and dismissed the suit in respect of relief of declaration. Though the order was passed on 16.07.2019, the petitioner had applied for copy and copies were made ready on 18.12.2019 and the same was received by the counsel on 09.01.2020 and that the present second appeal ought to have been filed on 17.03.2020.

6. It is the further case of the petitioner that he is 70 years old and that his daughter got married and she is living separately and his son is also a differently abled person affected by polio attack and thereby, the petitioner was unable to move around and while so, due to the onset of the covid pandemic during March 2020 the petitioner was unable to meet his counsel



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and that he was also affected by covid. In the mean while, the advocate office was shifted to some other place and the papers were misplaced and they were unable to file this appeal within time and thereby the delay of 991 days occurred in filing the second appeal.

7.Counter has been filed by contesting respondents 9 to 11 who are the legal heirs of the purchaser/Kaleeswarean, who is the person interested in pursuing the matter. It is the contention of the respondents 9 to 11 that the petitioner has been purposely delaying and prolonging the legal proceedings, which is pending for more than 23 years and that the original suit and first appeal had held in favour of the 4th respondent. After the demise of 4th respondent, the respondents 9 to 11, being legal heirs of 4th respondent, are entitled to 5/6th share in the suit schedule property and that they have also filed a suit for partition and separate possession of 5/6th share in the suit property and it is pending in C.S.No.194 of 2022 before this Court. The suit is ripe for trial and only to cause further delay in the suit, the present petition has been filed. It is also contented that if the delay is condoned and the present appeal is taken on file, it would lead to multiplicity of proceedings, thereby, prayed for dismissing the Condone Delay Petition.



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8. Learned counsel for the petitioner would submit that the appellant is aged about 70 years and the first appeal was dismissed on 16.07.2019 and they have applied for copies within time and the copies were made ready on 18.12.2019 and the same was received by the counsel on 09.01.2020 and the present second appeal ought to have been filed on 17.03.2020. Whereas due to covid pandemic, the petitioner was unable to file within time. He further submitted that the petitioner's daughter is married and living separately and the petitioner's only son is differently abled person and that there is nobody to care of him and that the petitioner being senior citizen facing so many ailments, prayed this court that the delay may be condoned.

9. Learned counsel for the respondents would vehemently oppose the petition and contented that the petition has been filed only as a counter blast to the partition suit filed by the respondent. The petitioner has not shown sufficient cause to condone the delay. The Condone delay petition filed in the Second Appeal is with a view to defeat the rights of the respondents.

10. Heard the learned counsel on either side and perused the materials available on record.



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11. Considering the age of the petitioner, this petition is ordered and thereby, the delay of 991 days in filing the second appeal is condoned. The learned counsel for the petitioner is directed to pay a sum of Rs.5,000/- (Rupees Five Thousand Only) to the counsel for the respondents 9 to 11 on or before 26.09.2023.

12. Post the matter on 03.10.2023.

20.09.2023

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Note: Issue order copy on 21.09.2023.



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