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C.M.P.(MD).No.2199 of 2023

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in
S.A.(MD).SR.No.11229 of 2023

ABDUL QUDDHOSE, J.

The petitioners have filed this Civil Miscellaneous Petition seeking to condone the delay of 247 days in filing the Second Appeal.

2. Aggrieved by the judgment and decree dated 10.08.2021 passed in A.S.No.22 of 2018 on the file of the V Additional District Judge, Madurai, the Second Appeal has been filed though with the delay of 247 days. The petitioners, who were the defendants in the suit filed for specific performance on the file of the Sub Court, Thirumangalam in O.S.No.893 of 2017, claim that they came to know about the judgment and decree dated 10.08.2021 passed by the V Additional District Judge, Madurai in A.S.No.22 of 2018 only after an execution petition was filed by the respondent in E.P.No.29 of 2022 before the Sub Court, Thirumangalam. According to the petitioners, only due to the said reason, there is a delay of 247 days in filing the Second Appeal.



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3. The suit in O.S.No.893 of 2017 was filed by the respondent before the Sub Court, Thirumangalam seeking for specific performance of an agreement of sale and in the alternative seeking for refund of the advance amount with interest. The said suit was partly allowed by the Sub Court, Thirumangalam by denying the relief of specific performance but by granting the alternate relief in favour of the respondent/plaintiff by directing the petitioners to refund the advance amount to the respondent/plaintiff. Aggrieved by the judgment and decree dated 29.09.2017 passed in O.S.No.893 of 2017 by the Sub Court, Thirumangalam, the respondent/plaintiff filed an appeal before the V Additional District Court, Madurai in A.S.No.22 of 2018. By judgment and decree dated 10.08.2021 passed by the V Additional District Court, Madurai in A.S.No.22 of 2018, the findings of the Trial Court were reversed and the appeal filed by the respondent/plaintiff was allowed and a decree for specific performance was granted in favour of the respondent/plaintiff. Aggrieved by the same, the petitioners who are the defendants in the suit have filed this Second Appeal, though with a delay of 247 days.



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4. Admittedly, an execution petition, namely, E.P.No.29 of 2022 was filed by the respondent/plaintiff before the Sub Court, Thirumangalam to execute the judgment and decree passed in O.S.No.893 of 2017 pursuant to the judgment and decree dated 10.08.2021 passed in A.S.No.22 of 2018 by the V Additional District Judge, Madurai under which the relief of specific performance was granted in favour of the respondent/plaintiff. According to the petitioners, they claim to know about the reversal of the judgment and decree dated 29.09.2017 by the Lower Appellate Court by its judgment and decree dated 10.08.2021 in A.S.No.22 of 2018 only after receiving the notice in E.P.No.29 of 2022 filed by the respondent/plaintiff. As seen from the judgment and decree dated 10.08.2021 passed in A.S.No.22 of 2018 before the V Additional District Court, Madurai, the petitioners had remained unrepresented in the arguments as their counsel did not make his submissions. Only the argument of the respondent/plaintiff was heard by the V Additional District Court, Madurai in A.S.No.22 of 2018 and based on the said submissions, the findings of the Trial Court in O.S.No.893 of 2017 were reversed by the V Additional District Court, Madurai in A.S.No.22 of 2018.



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5. The respondent/plaintiff has contended that the petitioners are aware of the judgment and decree dated 10.08.2021 passed by the V Additional District Court, Madurai as the petitioners' application seeking to deposit the advance amount to the credit of the suit pursuant to the judgment and decree dated 29.09.2017 passed by the Trial Court in O.S.No.893 of 2017 was dismissed on the ground that subsequent to the judgment and decree dated 29.09.2017 passed in O.S.No.893 of 2017, the Lower Appellate Court in A.S.No.22 of 2018 by its judgment and decree dated 10.08.2021 has reversed the findings of the Trial Court in its judgment and decree dated 29.09.2017. According to the respondent/plaintiff, having come to know about the judgment and decree dated 10.08.2021 by the order of the Trial Court on 14.02.2022 in I.A.No.108 of 2018, the present Second Appeal cannot be entertained since no sufficient reasons have been given by the petitioners for condoning the inordinate delay.

6. However, the petitioners have categorically contended in their affidavit filed in support of this Civil Miscellaneous Petition that only



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after receiving the notice in the execution proceedings in E.P.No.29 of 2022 in O.S.No.893 of 2017, they came to know that the Lower Appellate Court has reversed the findings of the Trial Court. As seen from the affidavit filed in support of this Civil Miscellaneous Petition, the petitioners claim that they had contacted their advocate immediately on receipt of the notice in E.P.No.29 of 2022 and their new advocate immediately filed a copy application through another advocate and received the certified copy of the judgment and decree of the Courts below only on 13.02.2023. According to the petitioners, on receipt of the certified copies of the decrees of the Courts below, they have immediately filed this Second Appeal and in the process, there is a delay of 247 days in filing the present Second Appeal.

7. Admittedly, the petitioners remained unrepresented during the stage of arguments before the Lower Appellate Court which has reversed the findings of the Trial Court by its judgment and decree passed in A.S.No.22 of 2018. It is also possible that the petitioners may not be aware of the orders passed by the Trial Court on 14.02.2022 in I.A.No. 108 of 2018, wherein, the petitioners had sought for deposit of the



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advance amount to the credit of the suit which came to be dismissed.

The suit has been filed for specific performance and in the alternate for refund of advance together with interest. The respondent/plaintiff partially succeeded before the Trial Court, wherein, the Trial Court had directed refund of advance in favour of the respondent/plaintiff and denied the relief of specific performance. Aggrieved by the same, the respondent/plaintiff preferred an appeal before the Lower Appellate Court in A.S.No.22 of 2018. The said appeal was allowed and the decree for specific performance was granted in favour of the respondent/plaintiff.

8. Being a suit for specific performance and that too, when the petitioners have categorically contended that they came to know about the reversal of the findings by the Lower Appellate Court in A.S.No.22 of 2018 only after they received the notice in E.P.No.29 of 2022 in O.S.No.893 of 2017 and also when their counsel remained unrepresented before the Lower Appellate Court and did not make his submissions, necessarily the reasons given by the petitioners in the affidavit filed in support of this Civil Miscellaneous Petition seeking to condone the delay



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of 247 days in filing this Second Appeal have to be accepted by this Court. It is also possible that the petitioners were not informed about the orders passed by the Trial Court in I.A.No.108 of 2018 dated 14.02.2022 by their counsel on record.

9. For the foregoing reasons, this Court will have to allow this application filed by the petitioners seeking to condone the delay of 247 days in filing this Second Appeal as sufficient reasons have been given by them for condoning the said delay. Accordingly, this Civil Miscellaneous Petition is allowed as prayed for and the delay of 247 days in filing the Second Appeal is condoned by this Court. Registry is directed to number the Second Appeal, if it is otherwise in order and list the same for admission.

06.03.2023

NCC : Yes / No
Index : Yes / No
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