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CMP(MD)



23

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Thursday, the Twenty Second day of June Two Thousand and Twenty
Three
PRESENT

The Hon`ble Mr.Justice ABDUL QUDDHOSE

CMP(MD) No.6207 of 2023

in

SA(MD) No.145 of 2019

1 P.C.AMARANATHAN
2 RAMACHANDRAN

... PETITIONER/APELLANTS
/APELLANTS/DEFENDANTS 1 & 4

Vs

1 C.LINGADURAI PANDIAN

... RESPONDENT/RESPONDENT
/PETITIONER/PLAINTIFF

2 MALLIKA
3 CHELLADURAICHI
4 ISMAIL

... RESPONDENTS/RESPONDENTS
/RESPONDENTS/DEFENDANTS 2,3 & 5

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to pass an order condoning 14 days of delay in filing an application for the set aside the order dated 27.03.2023 of this Hon'ble Court made in the Main Second Appeal in SA(MD)No.145 of 2019, including other CMP(MD)Nos.3413, 6430, 6432 and 6433 of 2019 on the file of this Hon'ble Court in the interest of natural justice.

PRAYER IN SA(MD) No.145 of 2019 :

To prefer this Second Appeal against the decree and judgment passed in A.S.No.27 of 2016 on the file of the Principal District Judge, Tirunelveli dated 09.01.2017 conforming the decree and judgment in O.S.No.181 of 2011 on the file of the Additional Sub Judge, Tenkasi, dated 01.02.2016 on the following among other.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.K.KEVIN KARAN, Advocate for the petitioners and MR.V.MEENAKSHI SUNDARAM, Advocate on behalf of the 1st Respondent and none appeared either in person or by an advocate on behalf of the Respondent Nos.2 & 3, the court made the following order:-

This application has been filed to condone the delay of 14 days in filing an application to restore the Second Appeal, which was dismissed for non-prosecution on 27.03.2023 by this Court.



2.While dismissing the Second Appeal for non-prosecution, this Court had vacated the status quo order granted by this Court earlier on 18.07.2019. Thereafter, the petitioners/appellants had filed an application before the vacation Court, namely, C.M.P.(MD).No.6207 of 2023, which was filed to condone the delay of 14 days in filing an application to restore the Second Appeal, which was dismissed for non-prosecution on 27.03.2023. While moving the restoration application before the vacation Court as seen from the order dated 11.05.2023, the petitioners/appellants seem to have submitted that the respondents/plaintiffs are interfering with their peaceful possession and enjoyment of the suit schedule property and based on the said representation, this Court had granted an order of interim injunction restraining the respondents from interfering with the petitioners' peaceful possession and enjoyment of the suit schedule property till the next hearing date.

3.Admittedly, there was no separate application filed by the petitioners/appellants before this Court pending this application seeking for condonation of 14 days delay in filing the restoration application. Even without an application, interim injunction has been granted in favour of the petitioners till the next hearing date by the order of this Court dated 11.05.2023.

4.Though the learned counsel for the first respondent/plaintiff has not raised any serious objection for allowing the application filed by the petitioners/appellants seeking for condonation of 14 days delay in filing the restoration application for restoring the Second Appeal, which was dismissed for non-prosecution, but however, he vehemently opposes the extension of the interim order granted by this Court on 11.05.2023 under which an interim injunction has been granted in favour of the petitioners restraining the respondents from interfering with their peaceful possession and enjoyment of the suit schedule property. He would submit that even without there being an application and that too when the first respondent/plaintiff is having the benefit of a decree for declaration and possession by virtue of the concurrent findings of the Courts below, by misrepresentation, the petitioners have obtained an interim order from this Court on 11.05.2023, which has to be set aside by this Court forthwith.

5.The petitioners/appellants were earlier represented by another counsel. The earlier counsel is also present through video conferencing. The new counsel Mr.K.Kevin Karan is also present today. Even though the earlier counsel Mr.R.Prakash has submitted before this Court that he has given change of vakalat, despite the same, he continues to press the case of the petitioners, which cannot be accepted by this Court as the petitioners are now represented by a new counsel by name Mr.K.Kevin Karan.

6.When the Second Appeal has been dismissed for non-prosecution and there is a delay of 14 days in filing an



application to restore the Second Appeal, which was dismissed for non-prosecution, the question of granting an interim order, that too without filing a separate application, will not arise. It is very clear that the petitioners have misguided the vacation Court and have obtained an order, which is inappropriate in view of the aforesaid reasons. The interim order granted by this Court on 11.05.2023 therefore has to be vacated forthwith by this Court. However, in view of the fact that the learned counsel for the first respondent/plaintiff has not raised any serious objection for allowing this condone delay application and that too when the delay is only 14 days, this Court is inclined to allow this condone delay application. But however, in view of the reasons stated above, the interim order granted by this Court on 11.05.2023 even without there being a separate application is vacated by this Court.

7. Accordingly, this Civil Miscellaneous Petition is allowed as prayed for and the interim injunction granted by this Court on 11.05.2023 is hereby vacated. Registry is directed to number the restoration application filed by the petitioners seeking for restoration of the Second Appeal, which was dismissed for non-prosecution on 27.03.2023, if it is otherwise in order and list the same for hearing.

sd/-

22/06/2023

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26/06/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

lm

TO

1 THE PRINCIPAL DISTRICT JUDGE, TIRUNELVELI.

2 THE ADDITIONAL SUBORDINATE JUDGE, TENKASI.

COPY TO

1 THE SUB ASSISTANT REGISTRAR, A.E. SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

2 THE SECTION OFFICER, JUDICIAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN
CMP(MD) No.6207 of 2023
in SA(MD) No.145 of 2019
Date :22/06/2023