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**A.No.1455 of 2024
in E.P.No.76 of 2022**

N.SATHISHKUMAR,J.

This application has been filed to condone the delay of 65 days in filing the appeal against the order passed by the learned Master. The brief facts leading to the filing of this application and also relevant to the record, is that the suit has been filed for specific performance by the decree holder.

2.The learned Single Judge has decreed the suit in favour of the plaintiff subject to the condition that plaintiff has to pay a further sum of Rs.10,00,000/- to the defendants 3 to 7. The matter has been carried in O.S.A. The Division Bench has confirmed the decree granting specific performance. However, the Division Bench has directed the plaintiff to pay a sum or Rs.20,00,000/- instead of Rs.10,00,000/- within a period of six weeks. Thereafter, it appears that the plaintiff has deposited the amount with a delay after obtaining the necessary permission from the Court. These facts are not in dispute. When the decree was put in for execution, the application under Section 47 of C.P.C r/w Section 28(1) of Specific Relief Act, has been filed



by the petitioner herein. Before the learned Master, the ground raised is that the amount ordered by the Division Bench has not been deposited and the review is pending against the order. The learned Master, taking note of the fact that apart from the amount ordered by the Division Bench, the decree holder has also paid a sum of Rs.47,87,395/- towards the discharge of the mortgage executed by the Judgement debtor, dismissed the application. Assailing the same, the application has been filed.

3. On perusal of the application, heard learned counsel for the petitioner and learned counsel for the respondents.

4. There was a delay of 65 days in filing the application. No doubt, while condoning the delay in filing any applications, liberal approach has to be taken by the Courts for substantial justice, provided proper reasons were stated in the affidavit. Except, in one line contending that the petitioner's mother was seriously ill and was taking treatment in hospital, no other reason was assigned in the application. Further, even the application is bereft of details as to the name of the mother and where she was taking treatment. In



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the absence of sufficient reason for the delay, as a matter of right, the delay cannot be condoned. Particularly, taking note of the fact that the application filed is to resist the execution of the decree, when the respondent has complied the orders of this Court and deposited the amount as per the direction of this Court, and parted with a huge sum of Rs.47,87,395/- towards the discharge of mortgage, the application filed under Section 47 of C.P.C r/w Section 28(1) of Specific Relief Act, *per se* is not maintainable. As a matter of fact, the delay cannot be condoned without proper reason explained. In view of this matter, this application is dismissed.

21.03.2024

vsn



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