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C.M.P.Nos.25539 and 25544 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.MP.Nos.25539 and 25544 of 2024
In A.S.Sr.No.76613 of 2022

A.Roseline Malliga

...Petitioner

Vs.

A.R.V.Balachandar

...Respondent

Prayer in C.M.P.No.25539 of 2024: Petition filed under Section 149 of the Code of Civil Procedure praying to condone the delay of 540 days in paying the deficit Court fee.

Prayer in C.M.P.No.25544 of 2024: Petition filed under Section 5 of the Limitation Act read with Section 151 of the Code of Civil Procedure praying to condone the delay of 8 days in filing the appeal.

For Petitioner : Mr.Sarath Chandra

For Mr.R.P.Vijaya Krishnan

For Respondent : Mr.T.Mathi



COMMON ORDER

(Order of the Court was made by R.SUBRAMANIAN, J.)

The applications have been filed to condone the delay in paying the deficit Court fee and to condone the delay in filing the appeal.

2. The suit was filed under Order XXXVII of the Code of Civil Procedure as a summary suit. The defendant filed an application for leave to defend in I.A.No.1 of 2019 and the same was dismissed on 23.12.2022 and a decree followed. The order in I.A.No.1 of 2019 dismissing the application for leave was challenged in C.R.P.No.117 of 2023 and this Court had dismissed the revision on merits. The order in Civil Revision Petition was also affirmed by the Hon'ble Supreme Court. The decree that followed upon dismissal of I.A.No.1 of 2019 is the subject matter of challenge in this appeal.

3. It is the settled law that the order passed in an application refusing leave once affirmed will operate as a *res judicata* and a decree granted in a suit cannot be challenged by way of separate appeal. We must point out



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here that it is open to the defendant who has suffered a decree either to challenge the order made in application refusing leave or the ultimate decree granted. Once the order made in an application for refusing leave is challenged and the order is confirmed, there cannot be a subsequent challenge to the decree, as the decree is consequent upon the application for leave under Order XXXVII Rule 3 sub-Rule 6A of the Code of Civil Procedure.

4. Mr.Sharath Chandran, learned counsel appearing for the petitioner would further contend that the judgment is without reasons.

5. In view of the special provision contained under Order XXXVII the judgment and decree in the suit is only a consequence of a dismissal of an application for grant of leave. The reasons cannot be required for a consequential order. Therefore, we do not see any reason to condone the delay, as we find that the appeal itself is not maintainable. Therefore the delay petitions are dismissed.



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6. The Court fee paid on the memorandum of appeal is directed to be refunded to the leaned counsel for the appellant.

(R.S.M., J.) (C.K., J.)
25.11.2024

dsa

Index : No
Neutral Citation : No
Speaking order



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