



WEB COPY



A/1846/2024 in A/5128/2023
in C.S.D.Sr.No.83403 of 2023

A.No.1846 of 2024
in A.No.5128 of 2023
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N. SATHISH KUMAR, J.

This Application has been filed against the order of the learned Master dismissing the Application filed to condone the delay of 345 days in representing the suit. The suit is filed to declare the settlement deed executed by the Plaintiff in favour of the defendant as null and void and consequently, for other reliefs.

2.The learned Master has dismissed the Application solely on the ground that the reasons assigned in the affidavit is not convincing and that a routine affidavit has been filed, as against which, the present application is filed.

3.The learned counsel for the applicant would submit that sufficient reasons have been given in the affidavit, that the delay occurred only due to the missing of the case bundle in the office of the Advocate. Despite the above said fact, the learned Master has mechanically dismissed the Application seeking condonation of delay and thereby,



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depriving the right of the applicant to establish substantial right.

4.The learned counsel for the respondents would submit that the Master has exercised his discretion properly, as even in the affidavit filed by the applicant for condonation of delay is bereft of any details. Hence, according to her such casual affidavit cannot be accepted to condone such delay. Further, her contention is that the conduct of the parties are to be assessed while condoning the delay. In support of her submissions, she also relied on the Judgment of this Court reported in ***the Union of India Vs. Messrs. Cavalier Shipping Co.*** [1989 2 LW 371] and ***Sathyanarayana Vs. T.J.Dhankoti @ Koti*** [2017 3 CTC 151], to show that the delay cannot be condoned.

5.On perusing the entire materials, it is seen that the application filed to condone the representation delay alone is dismissed by the learned Master. However, the learned Master has allowed the application to pay the deficit Court fee. Further, the reasons assigned in the affidavit itself indicate that the delay in representation occurred due to the mixing of the case bundle in the office of the Advocate. In such view of the



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matter, when the condonation of delay is a matter between the Court and the party and the party gives sufficient reasons that the bundle could not be located and mixed up with other bundles and therefore, the delay arose, the learned Master ought to have allowed the Application seeking condonation of delay, particularly, when he has permitted the applicant to pay the deficit Court Fee.

6. In such view of the matter, merely on the basis of the technical ground, the substantial right of the parties cannot be defeated casually. No doubt in a Judgment of this Court in *Union of India Vs.. Messrs. Cavalier Shipping Co.*, this Court has held that even for representation delay, notice ought to have been given to the defendant. In that case, there was a delay in representation of 17 years and in that context, the notice to the other side was held to be mandatory. Similarly, in *Sathyanarayana Vs. T.J.Dhankoti @ Koti*, there was a delay of 1112 days in representation. However, considering the factual background of the case and that no appropriate reasons were given, that petition was dismissed. However, in the given case, when the Master has already allowed the Application to pay the deficit Court fee, he ought to have allowed the



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7.In such view of the matter, the Application is allowed and accordingly, the order of the learned Master dismissing the Application seeking condonation of delay of 345 days in representing the suit is set aside and the delay is condoned and the suit is restored to file.

28.03.2024

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