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C.M.P.No.5510 of 2024
in O.S.A.SR.No.18108 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE P. DHANABAL

C.M.P.No.5510 of 2024

in

O.S.A.SR.No.18108 of 2024

J.Damien

... Petitioner

Vs.

1.M.Gowtham Chand
2.M.Prakash Chand
3.M.Mahendra Chand
4.M.Narendra Chand
5.Jesintha Mathew
6.M.Cathereen Rosalle
7.M.Jones Joseph

... Respondents

Prayer in C.M.P.No.5510 of 2024 : Civil Miscellaneous Petition filed under Order XIV Rule 8 of Original Side Rules r/w. Section 5 of the Limitation Act to condone the delay of 682 days in preferring the Original Side Appeal in O.S.A.SR.No.18108 of 2024.



C.M.P.No.5510 of 2024
in O.S.A.SR.No.18108 of 2024

Prayer in O.S.A.SR.No.18108 of 2024 : Original Side Appeal filed under Order XXXVI Rule 11 of Original Side Rules r/w. Clause 15 of the Letters Patent against the order and decree dated 29.10.2021 in C.S.No.399 of 2014 on the file of this Court.

For Petitioner : Mr.P.Willson Topaz
for M/s.A.S.Kailasam & Associates

For R1 to R4 : Mr.Harshit S.Jain
for M/s.Rank Associates

ORDER

(Order of the Court was made by **S.S. SUNDAR, J.**)

This Civil Miscellaneous Petition is filed to condone the delay of 682 days in preferring the above Original Side Appeal.

2.In the affidavit filed in support of the petition, the petitioner has stated that his erstwhile counsel failed to follow up the matter with the Registry to obtain certified copy of the preliminary decree dated 29.10.2021 at the relevant point of time and that therefore, the copy application itself was struck off thereafter.



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3.A counter affidavit is filed by the respondents contending that the petitioner failed to explain each and every day's delay. It is further contended that the period of delay has been wrongly given as 682 instead of 806 days delay.

4.Even though the dates and events have not been given with precision, this Court is unable to discard the reasons given for the delay. It is seen that the preliminary decree was passed on 29.10.2021 and the appeal has been filed on 12.02.2024. There are reasons for exclusion of certain period in the interregnum time during which the copy application was filed and then struck off. Therefore, this Court is convinced that the number of days of delay has been properly given in the affidavit. Considering the fact that the petitioner is aged 72 years, his contention that he was undergoing treatment for his illness needs to be considered to exercise our discretion. Since the delay could have been avoided by due diligence, this Court is inclined to condone the delay on payment of cost.

5.Accordingly, the delay is condoned and this petition is ordered



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subject to payment of cost of Rs.25,000/- (Rupees Twenty Five Thousand only) to the respondents, within a period of two weeks from the date of receipt of a copy of this order.

(S.S.S.R., J.) (P.D.B., J.)
22.11.2024

mkn

Internet : Yes

S.S. SUNDAR, J.
and
P. DHANABAL, J.



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