



CMP.No.4169 of 2024 in CMP.Nos.2304 of 2023 & 11932 of 2022 in
S.A.No.2282 of 2003

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G.ARUL MURUGAN,J

The second appeal was dismissed by this Court on 08.03.2018 for non prosecution. The appellants originally filed CMP.No.11932 of 2022 to condone the delay of 1418 days in filing the petition to restore the second appeal. The appellants also filed CMP No.2304 of 2023 seeking to restore the above second appeal. As the sole respondent in the appeal died in the meantime and as no steps were taken by the appellants to bring on record the legal heirs of the sole respondent within the time granted by this Court, by two separate orders dated 07.2.2023, it was recorded that CMP.No.11932 of 2022 stood abated and CMP.No.2304 of 2023 filed by the appellants was closed in view of the order passed in CMP.No.11932 of 2022.

2. Thereafter, the appellants filed CMP.Nos.9146, 9147 & 9149 of 2023 seeking respectively (i) to condone the delay of 222 days in filing the petition to set aside the abatement caused due to the death of the sole respondent, (ii) to set aside the abatement and (iii) to bring on record the legal heirs of the deceased sole respondent. After notice to the proposed respondents, CMP.Nos.



9146, 9147 & 9149 of 2023 were ordered on 13.12.2023 and the legal heirs of the deceased sole respondent got impleaded as respondents 2 to 5.

3. Now, the appellants filed CMP.No.4169 of 2024 seeking to reopen CMP.No.2304 of 2023, which was earlier closed on 07.2.2023 in the light of the order that was passed in CMP.No.11932 of 2022 on 07.2.2023.

4. Learned counsel the petitioners submitted that the counsel on record for the parties was not able to contact the concerned person to collect the papers and take necessary steps. The main case was listed on 08.03.2018 and it was dismissed for non prosecution on that day only later, he came to know about the dismissal of the second appeal, collected the copies and thereafter took steps to restore the second appeal and that in that process, there had been a delay, which was not at all intentional and therefore sought for condoning the delay and to reopen the second appeal.

5. Learned counsel appearing for the newly impleaded respondents 2 to 5 submitted that appellants have not immediately approached this Court for restoration and that earlier, they had taken steps by filing CMP.No.11932 of 2022 seeking to condone the delay of 1418 days in filing the petition to restore



the second appeal and that it stood abated as against the deceased sole respondent by order dated 07.2.2023.

6. It is seen that since the earlier counsel on record for the appellants got elevated, when the matter was listed for final hearing in the year 2018, the name of the other counsel on record Mr.V.Krishnan was printed in the cause list. As there was no appearance on behalf of the counsel on record for the appellants, the second appeal was dismissed for non prosecution on 08.3.2018 and that on coming to know about the dismissal of the second appeal, with great difficulty from the help of the counsel on record before the Lower Court, steps were taken to restore the appeal.

7. In the considered view of this Court, in the interest of justice, the parties can be allowed to contest the case on merits. Hence, this Court is inclined to condone the delay, however, on terms since the delay is huge.

8. Accordingly, in the light of the orders passed on 13.12.2023 in CMP.Nos.9146, 9147 & 9149 of 2023, CMP.Nos.11932 of 2022, 2304 of 2023



and 4169 of 2024 are ordered subject to payment of costs of Rs.10,000/-

(Rupees ten thousand only) within a period of two weeks from today to the

Tamil Nadu State Legal Services Authority, Chennai and the memo for proof

of payment of cost shall be filed before this Court. S.A.No.2282 of 2003 is

restored to file.

9. The second appeal shall be listed for hearing after the memo for proof of payment of cost is filed.

06.03.2024

adl



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