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C.M.P.No.4610 of 2024 in S.A.No.574 of 2008

C.M.P.No.4610 of 2024
in
S.A.No.574 of 2008

Reserved on 18.06.2024	Pronounced on 25.06.2024
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V.SIVAGNANAM, J.

This petition has been filed to condone the delay of 686 days in filing the petition in C.M.P.Sr.No.19807 of 2024 to set aside the order dated 14.06.2021, dismissing C.M.P.No.5830 of 2020 in S.A.No.574 of 2008 for default.

2.The learned counsel for the petitioner submitted that there is a delay of 686 days in filing the petition in C.M.P.Sr.No.19807 of 2024 to set aside the order dated 14.06.2021, dismissing C.M.P.No.5830 of 2020 in S.A.No.574 of 2008 for default. He further submitted that the petitioner filed second appeal against the judgment and decree passed in A.S.No.167 of 2003, dated 30.11.2005, on the file of the ADJ (FTC – IV), Chennai, confirming the judgment and decree dated 29.07.2002, in O.S.No.6820 of 1989, on the file of the VII Assistant Judge, City Civil Court, Chennai. When the appeal is pending, the sole respondent died on 13.11.2015. Immediately, on



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11.02.2016, the petitioner herein filed C.M.P.Sr.No.11159 of 2016 to implead the respondents herein as the legal heirs of the deceased sole respondent. The petition was returned for defects by the Registry on 27.02.2016. The return of the defective petition was not taken by the erstwhile counsel due to his illhealth. Thereafter, the main appeal was listed for hearing on 20.02.2017 under the caption “returns not taken cases” and was struck off for non compliance of returns on the same day. Thereafter, the appeal was listed on 25.10.2019. A CMP seeking restoration of the struck off petition and CMP.Sr.No.139920 of 2019 seeking to condone the delay in filing the restoration petition was filed by the petitioner, which were returned by the Registry seeking production of the original legal heir petition in CMP.Sr.No.11159 of 2016 in order to number the said petitions. The original CMP papers were not traced. Thereafter, a letter was given on 13.02.2020 to the Registrar (Judicial) for permitting reconstruction of the case papers in CMP.Sr.No.11159 of 2016. Thereafter, the condone delay petition in CMP.Sr.No.139920 of 2019 came to be numbered as CMP No.5830 of 2020, which was dismissed on 14.06.2021 for no representation on the part of the petitioner.



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2.1.The learned counsel further contended that the delay is not a deliberate one to gain time. The delay has to be condoned to advance substantial justice since there is no negligence on the part of the petitioner. To support his arguments, he relied on the judgment of the Hon'ble Supreme Court in ***Ram Nath Sao and Ors Vs. Gobardhan Sao and Ors.*** reported in ***MANU/SC/0135/2002***. He also relied on the judgment in ***Mata Din Vs. A.Narayanan*** reported in ***MANU/SC/0621/1969*** for the proposition that mistake of counsel may in certain circumstances be taken into account in condoning the delay and thus pleaded to allow the petition and condone the delay.

3.The learned counsel appearing for the respondents submitted that there is a gross negligence and inaction and want of bonafides on the part of the petitioner. He further contended that already there was a delay of 960 days in filing the petition in CMP No.5830 of 2020 to restore the petition filed to bring on record the legal heirs of the deceased first respondent filed in CMP.Sr.No.11159 of 2016. CMP No.5830 of 2020 was filed with a delay of 960 days and was not properly prosecuted by the petitioner. The case was finally posted on 03.06.2021 under the caption for dismissal. Thereafter, the petition was dismissed on 14.06.2021. To restore that petition, no action was



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taken immediately. Later, they had filed an application in C.M.P.Sr.No.19807 of 2024 with a delay of 686 days to set aside the order dated 14.06.2021.

This fact is proof for gross negligence and inaction on the part of the petitioner herein. The petitioner is the defendant in O.S.No.6820 of 1989. The plaintiff filed a suit against the defendant for declaration of pathway earmarked as ABCD in the plaint schedule property with mandatory injunction directing the defendant to remove the construction put up by him in the common pathway. The suit was decreed on 29.07.2002. The Trial Court found that the pathway is a common pathway to the plaintiff as well as to the defendant, which was also confirmed in the appeal in A.S.No.167 of 2003 on 30.11.2005. Challenging the same, the defendant filed S.A.No.574 of 2008. Now the second appeal is not admitted and the substantial questions of law are not formulated. In this circumstances, this Court has to consider the matter as the effect of the order to be passed by this Court would disturb the concurrent findings of the two Courts. Apart from this, there is no sufficient reason to condone the delay since there is gross negligence, inaction and want of bonafides on the part of the petitioner. Since there are no merits, he pleaded to dismiss the petition.



3.1.The learned counsel further contended that the allegations of negligence against the counsel is not a ground to condone the delay because the party is equally responsible to follow up the order and the Court cannot condone the delay in a routine manner. In the absence of any genuine reasons, the petition should not be allowed as it will cause prejudice to the other parties. To support his arguments, he relied on the judgment in **1.Chitravel, 2.Deivakani Vs. Jothimani** reported in **2024 (2) CTC 197**.

4.I have considered the matter in the light of the submissions made on either side and perused the materials on records as well as the Judgments passed by the Courts below.

5.On a perusal of the records, it is noticed that the petitioner is the defendant in O.S.No.6820 of 1989, on the file of the VII Assistant Judge, City Civil Court, Chennai. The plaintiff, G.Lakshmanan (now died) filed a suit against the petitioner/defendant for declaration of pathway earmarked as ABCD in the plaint schedule property besides seeking mandatory injunction to remove the construction put up by the defendant in the common pathway. After finding that the pathway is common to the plaintiff and to the defendant,



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the Trial Court by a judgment dated 29.07.2002, directed to remove the construction put up by the defendant. Aggrieved by this, the petitioner/defendant filed an appeal in A.S.No.167 of 2003, on the file of the ADJ (FTC – IV), Chennai. After considering the matter, the First Appellate Court confirmed the judgment and decree of the Trial Court dated 29.07.2022. Aggrieved over the same, petitioner filed S.A.No.574 of 2008. Pending appeal, the plaintiff died on 13.11.2015.

6.Further, it is noticed that there is a delay of 960 days to restore the petition filed to bring on record the legal heirs of the deceased first respondent. That condone delay petition was numbered as C.M.P.No.5830 of 2020 in S.A.No.574 of 2008. Since the petitioner did not appear and not represented by any counsel, the case was finally posted under the caption 'for dismissal' on 03.06.2021. Thereafter, on 14.06.2021, the petition was dismissed for default as there was no representation on behalf of the petitioner. Thereafter, the petitioner herein filed the present petition to condone the delay of 686 days in filing C.M.P.Sr.No.19807 of 2024 to set aside the order dated 14.06.2021, dismissing C.M.P.No.5830 of 2020 in S.A.No.574 of 2008. This fact is proof for gross negligence on the part of the petitioner and the learned counsel for the petitioner in conducting the case.



7.No doubt, the law is settled that the mistake of counsel may in certain circumstances be taken into account in condoning the delay, but we have to see whether the mistake was bonafide. In this case, I find no bonafide on the part of the petitioner. The allegation of negligence against the counsel is not a ground to condone the delay because the party is equally responsible to follow up the matter. No doubt, the delay has to be considered so as to advance substantial justice when no negligence, inaction or want of bonafides is imputable to a party. The condonation of delay is a matter of discretion of the Court. At the same time, such a discretion can be exercised only if the delay is within certain limits and the length of delay has to be supported by reasonable explanation is the only criteria.

8.In this case, the explanation pleaded by the petitioner is not an acceptable one. Sufficient time has been given to the petitioner while condoning the delay of 960 days to restore the petition filed to bring on record the legal heirs of the deceased first respondent. That petition was not properly prosecuted. Hence, after listing under the caption 'for dismissal' on 03.06.2021, the petition was dismissed on 14.06.2021 as there was no representation on behalf of the petitioner. Again, the petitioner filed



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C.M.P.Sr.No.19807 of 2024 with delay of 686 days to set aside the order dated 14.06.2021, dismissing C.M.P.No.5830 of 2020 in S.A.No.574 of 2008 for default.

9.I find gross negligence and inaction on the part of the petitioner and there are no merits in the petition. Therefore, this petition is dismissed.

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Internet:Yes
Index:Yes/No
Speaking/Non speaking order
NCC: Yes/No

25.06.2024



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V.SIVAGNANAM, J.

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Pre-delivery Order in
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.06.2024