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C.M.P. No. 6812 of 2024
in S.A.SR.No.22643 of 2024

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T.V. THAMILSELVI, J.

This petition has been filed seeking to condone the delay of 749 days in filing the above Second Appeal against the judgment and decree dated 07.08.2021 passed in A.S.No.25 of 2015, on the file of Sub-Court at Mettur reversing the judgment and decree passed in O.S.No.306 of 2009 dated 12.06.2015 on the file of District Munsif Court, Mettur.

2. Mr.M.Venkadesh Kumar, learned counsel for petitioner submitted that on 07.08.2021, the first appellate judge passed a Judgment and decree, however, due to covid pandemic and also due to lack of communication, they were not able to contact his counsel. He would also submit that the petitioners, being the senior citizens, they were not properly communicated. Hence, there is a delay of 749 days in filing the above second appeal arose, which is neither willful nor wanton. Therefore, he filed this petition to condone the delay in filing the above second appeal.

3. Mr. R.Nalliyappan, learned counsel for respondent raised strong objections stating that at the time of rendering judgment in the first appeal,



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there is no Covid pandemic and so also, they have also filed copy application belatedly after lapse of two years i.e. on 20.07.2023. Hence, he prayed to dismiss this petition.

4. On perusal of records, it reveals the fact that the petitioners are senior citizens and they have filed the copy application nearly after two years later. But, admittedly, they have filed the copy application and since they are being senior citizens, this court is inclined to consider the grounds, but however, there is a delay of two years on the part of petitioners to apply for the copy application, which is a procedural delay and the same can be rectified. If opportunity is not given to them, their valuable right to defend their case will be defeated. Furthermore, the plaintiff filed a suit for a permanent injunction and he is also claiming absolute right under the sale deed through Ex.A1. Considering that, though there is a delay on the side of petitioners, this Court is inclined to allow this petition on condition that the petitioners shall pay a cost of Rs.5000/- payable to the learned counsel for respondents within a period of one week from the date of receipt of copy of this order. On payment of cost, Registry is directed to number the Second Appeal if it is otherwise found to be in order and post the matter on 27.09.2024.



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