



CMP.Nos.7105, 7106, 7107, 7234 and 7235 of 2023

CMP.Nos.7105, 7106, 7107, 7234 and 7235 of 2023
in S.A.No.1192 of 2007

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G.ARUL MURUGAN, J.

The plaintiff in the suit has filed the suit for injunction as against the respondents herein/defendants in O.S.No.383 of 1997. The trial Court by judgment dated 29.11.2002 decreed the suit except 1 ½ feet of property which was found to be in possession of the respondents/defendants.

2. Challenging that portion of the decree, excluding 1 ½ feet, the plaintiff has filed appeal in A.S.No.25 of 2003. The first appellate Court, by judgment and decree dated 21.11.2005 dismissed the appeal, confirming the trial court decree.

3. Aggrieved by the concurrent decree passed by both the courts, the plaintiff has filed this second appeal in S.A.No.1192 of 2007 before this Court.

4. A perusal of the docket orders passed by this court in this second appeal would go to show that this second appeal was listed for final hearing on 12.11.2018 and at that time, it was represented that the plaintiff/sole appellant in the appeal died and therefore, for taking steps, the matter was adjourned to



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28.11.2018, 06.12.2018, 10.12.2018 and 25.07.2019.

5. It is a matter of record that the petitioner in the above CMPs has already filed a petition in C.M.P.No.11947 of 2019 to implead himself as appellant. This Court, earlier directed the petitioner to file proper application to set aside the abatement caused due to the death of the sole appellant and to substitute him as legal heir. For that purpose, the matter was adjourned to 05.09.2019 and 23.09.2019, but no steps were taken, hence, C.M.P.No.11947 of 2019 filed by the petitioner to implead himself as appellant was dismissed on 13.12.2019.

6. Ultimately, the second appeal was thereafter listed on 10.01.2020 and the appeal was dismissed as abated.

7. Now the petitioner has filed the petitions in (i) C.M.P.No.7105 of 2023 - to condone the delay of 2688 days in filing the petitions viz., (ii) C.M.P.No.7106 of 2023 to set aside abatement; (iii) C.M.P.No.7107 of 2023 to substitute the petitioner as 2nd appellant, (iv) C.M.P.No.7234 of 2023 to condone the delay of 337 days in filing the petition (v) C.M.P.No.7235 of 2023 to restore the second appeal.

8. In the affidavit filed by the petitioner, in support of the petition to



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condone the delay of 2688 days, he has stated that his father/sole appellant died on 26.05.2015 and his father had executed a settlement deed dated 28.03.2012 settling over properties including the suit property in his favour. It is stated that after the death of his father, he had filed petition in the second appeal to implead himself as a party and the same was not entertained and it was dismissed. However, the second appeal was listed for final hearing on 10.01.2020 and the same was dismissed as abated and the petitioner came to know about the same at later point of time and due to covid-19 pandemic situation, he was not able to take steps immediately and therefore, the delay occurred in filing the petition.

9. The first respondent in the above petition has filed counter affidavit stating that the sole appellant in the appeal has died as early as on 26.05.2015 itself. The petitioner was well within his knowledge about the pendency of the second appeal and he himself came before this Court by filing CMP to implead himself as second appellant in the appeal but the same was dismissed on 13.12.2019. The petitioner had slept over the matter and has filed this petition after a period of nearly 7 1/2 years, atleast after a period of 4 years from the date of dismissal of the petition. The petitioner has not adduced any satisfactory reasons for condoning the delay in filing the above petitions.



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respondent/defendant and perused the materials available on record.

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11. The concurrent judgments passed by the trial court below would go to show that the suit filed by the plaintiff has been decreed except 1 1/2 feet on the finding that the same was in the possession of the defendants. The lower appellate Court also confirmed the decree. Against which this second appeal is filed. When the sole appellant in the appeal has died as early as on 26.05.2015, the appeal got abated. But however, even after the second appeal listed for final hearing on 12.11.2018, the appeal was adjourned for more than a year and the petitioner has not taken any steps to file necessary petitions to set aside the abatement and to substitute himself as 2nd appellant.

12. When the petitioner himself has come before this Court and filed petition in C.M.P.No.11947 of 2019 to implead himself as a party, the said petition was dismissed on 13.12.2019 pointing out that the petition is not maintainable, As such the appellant/petitioner has to take necessary steps to set aside the abatement and thereafter implead himself as the party. However, the petitioner has kept silent and has slept over the matter. Now the above petitions have been filed to condone the delay of 2688 days in filing the petition and the

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petitioner is duty bound to explain the delay sufficiently and explain for each



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day delay. But it is seen from the records that even though the petition filed by the petitioner was dismissed as early as on 13.12.2019, he has filed the above petitions only on 06.03.2023 and the only reason adduced is that he was not able to file petitions due to covid-19 pandemic. I am of the considered view that the petitioner/appellant has failed to give any satisfactory reason for the huge delay of more than three years caused after dismissal of the petition filed by him to implead himself as a party.

13. As the huge delay has not been satisfactorily explained and further when the petitioner was well within the knowledge of the proceedings and that when he himself filed petition to implead himself and the same was dismissed in the year 2019 itself, the present petition filed by the petitioner without any explanation for the said delay cannot be accepted. Therefore, for the reasons stated, the above petitions are dismissed.

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