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C.M.P.No.7177 of 2024

C.M.P.No.7177 of 2024
in
A.S.SR.No.61834 of 2023
(Filing Number)

M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

[Order of the Court was made by
K.GOVINDARAJAN THILAKAVADI, J.,]

Captioned Civil Miscellaneous Petition is filed to condone the delay of 59 days in filing the above appeal in A.S.SR.No.61834 of 2023 assailing against judgment and decree dated 30.09.2022 passed in O.S.No.40 of 202016 on the file of the Additional District Court, Tiruvannamalai on the grounds set out in paragraph Nos.10, 11 and 12 which are extracted herein:

'10. I submit that the suit was decreed on 30.09.2022, my counsel had filed the copy application on 10.10.2022 and the copies were made ready on 10.12.2022, subsequently my counsel informed the same, and he suggested to file an appeal before this Hon'ble Court. I submit that I also requested him to take necessary steps to file the appeal. I submit that my trial Court counsel sent the case papers to the counsel at Chennai. I submit that during the 3rd week of



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February 2023, I approached my trial Court counsel to know about the appeal status, for which he replied that the counsel at Chennai had requested the documents which are filed in the suit and also required depositions of the witnesses, he also said that it will take some time to collect the papers and send it to the Chennai and asked me to contact him during 1st week of March 2023. I submit that when I contacted him during 1st week, he replied that he has collected most of the documents and yet some documents are not available and taking steps to collect the same.

11. I submit that during 1st week of March 2023, my trial Court counsel informed that all the papers required by the counsel at Chennai was sent to him and asked me to meet him in person and take necessary steps to file the appeal.

12. I submit that immediately, I approached my counsel at Chennai and requested him to take steps to file the appeal, accordingly, the appeal was prepared and filed during 1st week of April 2023. In the meantime, there is a delay of 59 days in filing the above appeal. The petition filed in C.M.P.No.4931 of 2024 to condone the delay and the same was withdrawn as dismissed with liberty to file fresh application.'

2. Mr.B.Jawahar, learned counsel appearing for the petitioner / appellant would submit that the delay has occurred in collecting the papers from the trial Court.



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3. Per contra, Mr.K.R.Ramesh Kumar, learned counsel appearing for the respondent would submit that the explanations given in the supporting affidavit are neither sufficient nor reasonable and therefore, the delay may not be condoned and the petition deserves to be dismissed.

4. Keeping in view the submissions made by the respective counsel and perusing the supporting affidavit, we do not find any reason that the delay has occurred due to deliberate or gross negligence on the part of the petitioner / appellant. Considering the above facts and circumstances of the case, we are inclined to allow this petition in the interest of justice.

5. Accordingly, this Civil Miscellaneous Petition is allowed. Delay is condoned. There shall be no order as to costs.

6. Registry is directed to number the main appeal, if it is otherwise in order and list the same as per chronological order.

[M.S., J] [K.G.T., J]
27.03.2024

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