



C.M.P.No.7896 of 2024
in S.A.No.875 of 2017

P.B.BALAJI, J.,

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This petition has been filed to extend the time for filing the affidavit of the 1st respondent/plaintiff in the second appeal as directed by this Court in judgment dated 01.03.2024.

2.I have gone through the affidavit filed in support of the said petition. In fact, the learned counsel on record appearing for the 1st respondent/plaintiff has chosen to swear to an affidavit stating the circumstances under which the affidavit could not be filed in time and consequently, the delay has occasioned.

3.The learned counsel for the 2nd respondent in the second appeal, Mr.R.Jayaprakash would submit that in view of the delay, a right under Section 28 of the Specific Relief Act having stood accrued to the 2nd respondent in the second appeal, the application for extension of time cannot be entertained. He would place reliance on the decision of the Hon'ble Supreme Court in *Krishnan Ezhuthassan and Others Vs. Joseph and Others* reported in 2024 SCC Online Ker 5108, in support of his contention.

4.I have carefully considered the submissions advanced by the



learned counsel on either side.

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5.This Court, in and by a judgment dated 01.03.2024, disposed of the second appeal with certain directions. Subsequently, the matter was mentioned at the request of the learned counsel for the petitioner herein and in and by an order dated 08.03.2024, certain modifications were directed to be carried out in the judgment dated 01.03.2024.

6.It is seen that the affidavit filed by Mr.M.Dhananjeya Raju, the 1st respondent/plaintiff is dated 17.03.2024 and it has been duly executed before an Advocate at Chennai. The affidavit is in compliance with the directions issued by this Court in the Second Appeal. However, for reasons beyond the control of the petitioner, the affidavit could not be filed in the Registry within the time stipulated for which the learned counsel appearing for the petitioner has chosen to file a sworn affidavit. I am inclined to accept the reasons set out in the said affidavit and extend the time for filing the affidavit of the 1st respondent in the second appeal.

7.Insofar as the objection regarding Section 28 of the Specific Relief Act, I do not find the said provision applying to a case of this nature.

The said Section only contemplates a right being accrued where direction



was issued for deposit of money and not otherwise. The relevant portion of the judgment of the Kerala High Court reads as follows:

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“13.The power which is entrusted to the Court under Section 28 of the Act is equitable in nature and it is open to the Court to grant additional time for the performance of any condition laid down in the decree. In deciding an application under Section 28(1) of the Act, the Court must see all the attending circumstances including the conduct of the parties.”

8.The said sentence cannot be read in isolation and it has to be read along with the subsequent sentences which clearly mean that the failure is only with regard to deposit of amount and not with regard to a condition like filing of an affidavit as in the present case.

9.It is also brought to my notice that the affidavit has already been filed and the same is now in order in view of the time being extended. This petition is ordered and the affidavit dated 17.03.2024 filed by the 1st respondent/plaintiff is taken on file.

10.Registry is directed to draft the decree and issue the same to the parties within a period of two weeks from today.

26.09.2024

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