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C.M.P. No.9535 of 2024
in O.S.A. (CAD) SR. No.52190 of 2024

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in
O.S.A. (CAD) SR. No.52190 of 2024

M.SUNDAR,J.,
and
N.SENTHILKUMAR, J.,

(Order of the Court was made by M.SUNDAR, J.)

Read this in conjunction with and in continuation of earlier proceedings made in the listing on 29.04.2024 (first listing) which reads as follows:

'C.M.P.No.9535 of 2024
in OSA(CAD)No.52190 of 2024
(Filing Number)

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

[Order of this Court was made by M.SUNDAR,J.,]

Captioned 'Civil Miscellaneous Petition' [hereinafter 'CMP' for the sake of brevity, convenience and clarity] has been filed with a 'Condonation of Delay' [hereinafter 'CoD' for the sake of convenience and clarity] prayer. CoD prayer is qua 211 days in filing above CMA being OSA(CAD)No.52190 of 2024 (Filing Number).

2. *Mr.K.V.Babu, learned counsel representing the counsel on record for petitioner/appellant is before this Court.*

3. *The reasons for delay have been articulated in*



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paragraph Nos.5, 6, 9 and 10 of the support affidavit and the same read as follows:

'5. I submit that the Hon'ble Madras High Court pronounced the order in C.S.No.143 of 2022 on 20th June 2023. I additionally submit that copies for the order were applied for immediately on 21.06.2023, the stamps were called for on 17.07.2023, the same was complied on 18.07.2023 and the order became finally ready on 21.07.2023. I further submit that as per Section 13 of the Commercial Courts Act 2015, an appeal to be filed within 60 days which is on or before on 19.09.2023. However, due to unavoidable circumstances, the appeal against the impugned order in C.S.No.143 of 2022 is filed on 15.04.2024. Therefore, the above appeal has been filed with a delay of 209 days, hence this application.

6. I humbly submit, we did not come to know about the impugned order dated 20.06.2023 passed in C.S.No.143 of 2022 until our previous counsel informed us during the last week of the September. Immediately, when I rushed to our previous counsel's office to get information on the further course of action, I was informed that the copy of the impugned order had been received by one of the junior counsels of their Firm and since that particular junior counsel who was looking after our commercial suit was relieved from the office, the partners of the Firm did not come to know about the receipt of the copy of the impugned order. I was further informed that only when the next person taken charge, it came to the knowledge of the Partners and hence our previous counsels could not inform us about the dismissal of the Commercial Suit immediately.

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9. I submit that there was a Global Legal Workshop organized by our Management at South Korea during the last week of October and I have been engaged in the preparatory works like paper presentations etc., during the 3rd week of October and had travelled to South Korea during the 4th



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week of October. Unfortunately, immediately after returning back from Korea, I was down with severe fever and cold due to the cold weather in Korea. Hence, I could resume our regular work only in the 2nd week of the November. After getting advice and approval from our Korean Legal Team, I have instructed our previous counsel to prefer an appeal against the judgment and decree dated 20.06.2023 in C.S.No.143 of 2022 as we got good merits in the case.

10. I further submit that after few weeks of our close follow up with our previous counsel to know the progress in filing Appeal Case, during the 1st week of December, they sought for few financial information like the full particulars about the entire 133 invoice raised by the appellant against the respondents, the total payments made by the respondents etc., as such details plays a vital role in the appeal case.'

4. Issue notice to all three respondents returnable by 11.06.2024. Private notice permitted.

List on 11.06.2024.'

2. Thereafter, service was completed on R2 and R3 and regarding R1, following proceedings were made in the listing on 23.07.2024:

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(Filing Number)

M.SUNDAR, J.,
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From the cause list, we find that notice remains unserved on R1.

2. List the captioned matter before Joint Registrar (Appellate Side) on 30.07.2024. Let learned counsel for appellant take steps to effect service on R1 either through conventional modes or by resorting to substituted service and let this exercise be completed by 27.08.2024.

3. The Joint Registrar (Appellate Side) to make a PBC (Post Before Court) order after ensuring that service is duly effected on R1. If this exercise is not completed by 27.08.2024, Joint Registrar (Appellate Side) to put up a suitable note.

List on 05.09.2024.'

3. Pursuant to aforementioned listing, the matter went before Joint Registrar (Appellate Side). Joint Registrar (Appellate Side) has put up a note dated 22.08.2024 and a scanned reproduction of the same is as follows:



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It is most respectfully submitted that pursuant to the direction of the Hon'ble Division Bench of this Court dated 23.7.2024, this matter came to be listed before the Joint Registrar (AS) (In short 'JR(AS)') on 30.07.2024. On 30.07.2024, the learned counsel for the appellant appeared and sought time to take steps to the first respondent and on his request the matter was adjourned to 06.08.2024.

2. It is further submitted that when the matter was remitted on 06.08.2024, at the request of the learned counsel for the appellant to file petition for Substituted Service, adjourned to 07.08.2024. On 07.8.2024, CMP No.17087 of 2024 in O.S.A.(CAD)SR.No.52190 of 2024 has been filed for Substituted Service and the same was ordered by fixing the date of hearing as 22.8.2024.

3. When the matter was listed on 22.8.2024, the learned counsel for the appellant has filed Affidavit of Service enclosing a copy of the paper publication effected in Times of India, Ahmedabad Edition, dated 09.8.2024, wherein the names of the parties, case number, name of the Counsel for the Appellant and the date of

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: 2 :

hearing have been correctly shown. The first respondent was called by name and the they did not appear either in person or through their Advocate and the matter was kept for the appearance of the first Respondent till 4.00 p.m., and there was no representation on behalf of the first Respondent. The service on the first respondent is effected and completed. The matter may be posted before the Court for further proceedings.

Dated : 22nd August, 2024.


22/8/2024
Joint Registrar (A.S.)

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4. Today, the names and addresses of all three respondents (R1 to R3) have been duly shown in the cause list. We are informed by the Registry that R1 to R3 have not chosen to enter appearance through counsel. There is no representation in the Court either.

5. Mr.K.V.Babu, learned counsel representing the counsel on record for petitioner, advertng to our proceedings dated 29.04.2024 reiterates the same and draws our attention to paragraphs 5, 6, 9 and 10 of the support affidavit (the same have been extracted and reproduced in our 29.04.2024 proceedings).

6. As would be evident from the narrative thus far, the respondents have not chosen to come before this Court much less have they chosen to oppose the CoD prayer. Be that as it may, we are convinced that the reasons adduced in paragraphs 5, 6, 9 and 10 of the support affidavit are acceptable owing to the nature of the matter, in the light of the facts and circumstances and therefore we accept the reasons and accede the CoD prayer *albeit* with a rider that the delay would be condoned subject to payment of costs. Cost of Rs.10,000/- (Rupees Ten Thousand only) in favour of Madras High Court Advocate Clerks' Welfare Association, Chennai shall be



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paid within a fortnight from today i.e., by 19.09.2024. If the cost is not paid within the time stipulated, captioned CMP will stand dismissed without further reference to this Court.

7. Captioned CMP is ordered/allowed on terms as above.

(M.S.J.) (N.S.J.)
05.09.2024

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P.S. I: Upload forthwith

P.S. II: Though the captioned CMP is disposed of, list the captioned CMP under the cause list caption 'FOR REPORTING COMPLIANCE' on 26.09.2024.



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**M.SUNDAR,J.,
and
N.SENTHILKUMAR, J.,**

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05.09.2024