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**A.No.2744 of 2024
in
Tr.CS.No.769 of 2013**

Dated : 04.10.2024

A.A.NAKKIRAN, J.

ORDER

This application has been filed by the 1st Defendant in C.S.No.769 of 2013 to condone the delay of 551 days to file an application to set aside the ex-parte judgment and decree passed in TR.C.S.No.769 of 2013 dated 02.11.2022.

2.The learned counsel for the Applicant submits that in OS.No.6583/2008 filed by Mr.T.Sivaprakasm before the XVI Assistant City Civil Court, Chennai, seeking for partition, the applicant was served summons and he promptly engaged an Advocate to contest the suit. After the said O.S was re-numbered as TR.CS.No.769 of 2013 and transferred to this court, the applicant has not received any summons in this regard.



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Hence, he could not appear before this court. After setting him as *exparte*, in the aforesaid suit, this Court passed a preliminary decree on 02.11.2022.

The non- appearance is neither wilful nor wanton. The applicant came to know only on receiving the notice from the Court about the appointment of the Advocate Commissioner for the purpose of conducting a local inspection over the suit property for partitioning the same. There is overwhelming *prima facie* case and the balance of convenience on his side. No loss or hardship would be caused to the respondent if this application is allowed. In support of his arguments, he relied upon the Judgments in the cases of (i) *Ram Nath Sahu Ors. s. Gobardhan Sao & Ors.* (2002 AIR SCW 978), (ii) *Ummer Vs Pottengal Subida reported (201 (15) SCC 17) and Bhivchandra Shankar More Vs. Balu Gangaram More (2019(6) SCC 387)*. Hence, this application has been filed, seeking the relief, as stated above.

3. The learned counsel for the respondent submits that the applicant has filed the present application belatedly and wantonly with malafide intention to drag on the proceedings. Further, while the Advocate Commissioner proceedings is to be initiated, the application has been filed



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without giving any proper reasons for the delay of 551 days in filing the application. In support of his argument, he relied upon the Judgment in the case of "*Esha Bhattacharjee Vs. Managing Committee of Raghunathpur, Fafar Academy and others reported in 2013(5) CTC 547*". Hence, this application is liable to be dismissed.

4. Heard both sides and perused the materials available on record.

5. On a perusal of the records, it reveals that no intimation was served to the applicant/defendant after transferring the case to this Court. Having considered the sufficient reasons stated in the affidavit, in order to giving sufficient opportunity to both the parties concerned to put forth their contentions, and in the interest of Justice, this Court is inclined to allow the said application.

6. Accordingly, this application is allowed on condition that the applicant shall pay a sum of Rs.5,000/- to the respondent on or before 18.10.2024 failing which the application shall stand dismissed.



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7. Post the case on 19.10.2024.

04.10.2024

Index: Yes/No
Web: Yes/No
Speaking/Non Speaking
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**Pre-Delivery Order in
A.No.2744 of 2024
in
CS.No.769 of 2013**

04.10.2024