



C.M.P.No.209 of 2021
in
A.S.No.738 of 2009

RMT.TEEKAA RAMAN, J.,

The respondent herein filed O.S.No.104 of 2006 before the learned Additional District and Sessions Judge (Fast Track Court No.III, Coimbatore) for specific performance of the suit sale agreement dated 06.11.2005 and the same was decreed. Hence the defeated defendant / appellant has preferred the above appeal in A.S.No.738 of 2009.

2. When the matter was posted for final disposal on 22.11.2017, it appears that the learned counsel for the appellant reported no instructions and accordingly, the case was adjourned to 06.12.2017 and subsequently on 15.12.2017, there was no representation for the appellant and hence the matter was directed to be posted on 18.12.2017 under the caption 'for dismissal'. On 18.12.2017, when the matter was taken up for hearing there was no representation for the appellant. Hence, the Appeal Suit was dismissed for non-prosecution.

3. As per the counter affidavit, E.P.No.1 of 2018 was filed before the concerned V Additional District Judge, Coimbatore for execution of the sale deed.



4. It appears that C.M.P.No.20528 of 2019 was filed by the appellant to condone the delay of 533 days in filing the restoration petition for restoring the appeal which was dismissed on 18.12.2017. After contest, the same was allowed on 11.12.2020, on payment of costs of Rs.25,000/- , on or before 01.04.2020.

5. Records reveals that since during Covid-19 period, the cost was not paid, it was enhanced to Rs.27,000/-. As could be seen from the Registry endorsement, the cost memo was filed by the learned counsel for the appellant and accordingly the delay was condoned.

6. C.M.P.No.209 of 2021 in A.S.No.738 of 2009 was filed to set aside the order of dismissal for non-prosecution dated 18.12.2017 and restore the First Appeal.

7. The learned counsel for the petitioner is heard. The respondent filed counter and heard the argument of the learned counsel for the respondent.



8. Taking into consideration that E.P is still pending and sale deed was not executed, I am inclined to allow this petition, since it is consequential to earlier order in C.M.P.No.20528 of 2019 in A.S.No.738 of 2009. Accordingly, C.M.P.No.209 of 2021 in A.S.No.738 of 2009 is ordered.

9. Registry is directed to restore the A.S.No.738 of 2009 and post the matter for final disposal on 23.01.2024. It is hereby made clear that the petitioner shall not take further adjournment, failing which, the matter will be decided on merits.

02.01.2024

nvi



WEB COPY

C.M.P.No.209 of 2021 in
A.S.No.738 of 2009



RMT.TEEKAA RAMAN,J.,

nvi

C.M.P.No.209 of 2021 in
A.S.No.738 of 2009

02.01.2024