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C.M.P.No.9660 of 2023 in
O.S.A.SR.No.56349 of 2022

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THE HON'BLE CHIEF JUSTICE

and

D.BHARATHA CHAKRAVARTHY, J.

(Order of the Court was made by the Hon'ble Chief Justice)

Heard Mr.P.R.Raman, learned Senior Counsel appearing for Mr.Hari Radhakrishnan, learned counsel for the applicant and Mr.Sathish Parasaran, learned Senior Counsel appearing for Mr.K.Thyagarajan, learned counsel for the first respondent.

2. The present application is filed for condonation of delay of about 1109 days in filing the appeal.

3. The present applicant has filed an appeal against the judgment and decree passed by the learned Single Judge in C.S.No.625 of 2014, being aggrieved to the extent that the original plaintiff/first respondent is entitled to special, moral rights in regard to the 'musical works' composed by him, upon which the 'sound recordings' in question are based, in line with Section 57 of the Copyright Act, 1957, i.e, Clause (ii) of paragraph 81 of the impugned judgment and decree.

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4. Learned Senior Counsel appearing for the applicant submits that the judgment and decree was delivered on 04.06.2019. During the Covid period, the period from 15.03.2020 to 28.02.2022 is exempted under the order of the Apex Court. The judgment and decree was made ready on 22.07.2021. On 09.02.2022, the first respondent filed an appeal against the same judgment and decree taking benefit of the exemption of limitation period granted by the Apex Court on account of the Covid 19 pandemic. The present applicant filed an appeal on 06.06.2022 and thereafter, the copy application was filed seeking certified copy of the judgment and decree on 11.07.2022. The said judgment and decree is made ready on 22.07.2022.

5. According to the learned Senior Counsel for the applicant, excluding the time exempted under the orders of the Apex Court granting exemption from the limitation period from 15.03.2020 to 28.02.2022, the delay would be more than one year. In fact, the applicant had given change of vakalath. The applicant was not to gain by the delay. Even the first respondent/original plaintiff has filed an



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appeal against the same judgment and decree.

6. The learned Senior Counsel for the first respondent opposes the application for condonation of delay on the ground that no sufficient cause is spelt out in the application. Except the change of vakalath, no cause, much less a sufficient cause, is spelt out in the application. The present applicant appeared in the appeal filed by the first respondent on 18.02.2022 and opposed the application for interim orders. The learned Senior Counsel for the first respondent relied upon the judgment of the Apex Court in the case of *N.Balakrishnan vs. M.Krishnamurthy*¹.

7. It is trite that the applicant may not explain each and every day's delay. The courts normally are liberal in entertaining the applications for condonation of delay. In the present case, the judgment and decree impugned is passed on 04.06.2019. The applicant has not filed an application for certified copy of the judgment and decree immediately, but has filed the same only after filing the present appeal. Laxity appears on the part of the applicant

¹ (1998) 7 SCC 123



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even for filing the application for certified copy of the judgment and decree.

8. It would appear that the first respondent has also challenged the same judgment and decree by filing an appeal bearing O.S.A.No.29 of 2022. The judgment and decree impugned in the present appeal is also the subject matter of challenge in the appeal filed by the original plaintiff/first respondent. The present applicant claims to have been aggrieved only by some portion of the said judgment and decree.

9. It appears that the present applicant could have filed a cross objection in the same appeal filed by the first respondent, referring to Order XLI Rule 33 of the Code of Civil Procedure, 1908, however, has now chosen to file an independent appeal. The judgment and decree assailed by the present applicant is already a subject matter of consideration before this appellate court in an appeal filed by the first respondent/original plaintiff. It would be appropriate to hear both the appeals together so that the rights of the parties are decided by the Court.



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10. It is also trite that when the cause for substantial justice and technical considerations are pitted against each other, the cause for substantial justice has to be sub-served. The applicant would not stand to gain by the delay.

11. In light of the above, we are inclined to condone the delay of 1109 days in filing the appeal, however, the applicant also deserves to be mulct with costs for the delay caused. In view of the above, we pass the following orders:

The application seeking condonation of delay of 1109 days in filing the appeal is allowed on condition of the payment of costs of Rs.50,000/- (Rupees Fifty Thousand Only) within four weeks from today.

(S.V.G., CJ.)

(D.B.C., J.)



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