



C.M.P.No.13547 of 2024

**Orders reserved on
18.07.2024**

**Orders pronounced on
22.07.2024**

C.M.P.No.13547 of 2024
in
A.S.No.sr80622 of 2024

RMT.TEEKAA RAMAN, J.

This Petition has been filed to condone the delay of 112 days in filing the appeal.

2.The Respondent/Plaintiff filed a suit in O.S.No.540 of 2018 before the XIX Additional City Civil Court, Chennai, seeking recovery of money on the ground that he is entitled for certain incentives being worked as 'Aesthetic Surgeon' in the Defendant's Clinic viz., Vcare Super Specialty Clinic. The Plaintiff proceeds on the basis that he has completed Master of Dental Surgeon and he is entitled for salary along with his incentives on surgical basis. He was worked as Aesthetic Surgeon in Vcare Super Specialty Clinic for a period of nine months and it is alleged that the Defendant has not paid the incentives as per the agreed terms and accordingly, filed the Suit claiming compensation from the Defendant to the tune of Rs.8,03,648/- towards incentives along with



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Rs.2,00,000/- for mental agony.

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3.Learned counsel for the Respondent/Plaintiff filed counter affidavit on behalf of the Respondent/Plaintiff.

4.Pre-suit notice was issued and the Defendant filed written statement in the Suit. After filing written statement, the Defendant remained exparte. Execution Petition was also filed. Subsequent thereto, it appears that the Defendant has filed a petition to set aside the exparte order passed in Suit, with the petition to condone the delay of 370 days in filing the said Petition on the ground of Covid-19. As per the counter affidavit, the said delay was condoned and the suit was taken up, and after trial the Suit was decreed. The Plaintiff filed Execution Petition on 15.07.2024. Now the Defendant has filed an Appeal, challenging the Decree and Judgment passed in O.S.No.540 of 2018 by the learned XIX Additional Judge, City Civil Court, Chennai, on 28.11.2023, with the present Petition to condone the delay of 112 days in filing the Appeal.

5.Heard Mr.Krishna Ravindran, for Mr.J.Abdul Hadi learned counsel for the Petitioner and Mrs.V.Vijayalakshmi learned counsel for the Respondent.



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6.Learned counsel for the Petitioner would contend that due to administrative delay and to recalculate the percentage of incentive, there was a delay of 112 days. He would further contend that the staff concerned, who has followed the case had left the job without updating the case status to them, which resulted in lack of communication between the Advocate and the party.

7.Learned counsel for the Respondent would contend that earlier there was a delay of 370 days in setting aside the exparte order and now there was a delay of 112 days and hence, the delay period should be treated as 482 days in total.

8.This Court is unable to accept the contention of the learned counsel for the Respondent for more than one reason that the earlier delay period of 370 days in setting aside the exparte order passed in Suit was already condoned by the competent Court viz., the trial Court and hence, the said plea is no longer open for the Respondent. In respect of 112 days delay in filing the Appeal, I find that there is some valid reason for the delay stated in the affidavit, filed in support of this Petition.

9.Therefore, this Court holds that the Petitioner has made out sufficient



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cause to condone the delay of 112 days. Hence, in the interest of justice, this

Petition is ordered as prayed for. The Registry is directed to number the Appeal Suit, if it is otherwise in order and the post the Appeal on 29.07.2024. The Registry is further directed to print the name of the learned counsel for the Respondent viz., Mrs.V.Vijayalakshmi as learned counsel for the Respondent in the causelist, while listing the Appeal Suit for hearing.

22.07.2024

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RMT.TEEKAA RAMAN, J.

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Pre-delivery Order in
C.M.P.No.13547 of 2024
in
A.S.No.sr80622 of 2024

Dated: 22.07.2024