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CMP.No.15672 of 2024

in

S.A.No. 462 of 2017

R. SAKTHIVEL, J

The petitioner/appellant has filed this petition under Section 5 of the Limitation Act, 1963, seeking to condone the delay of 832 days in filing the restoration petition.

2. The petitioner/appellant has filed an affidavit in support of this petition wherein it is stated that the second appeal was finally posted on 11.02.2022 and it was dismissed for non prosecution on the same day. Furthermore, it is stated that due to the fault of the counsel on record, this second appeal was dismissed during the period of the COVID-19 Pandemic. Therefore, the petitioner/appellant was unable to follow up on this case. Further stated that the learned counsel on record was unwell and he was admitted in Shri Balaji Medical College and Hospital, Chrompet, continuously from 03.04.2022 to 02.12.2023. Accordingly, the



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petitioner/appellant prays to condone the delay of 832 days in filing the restoration petition.

3. Reiterating the averments made in the affidavit, the learned counsel for the petitioner submitted that due to medical reasons, then learned counsel on record was not able to proceed with this second appeal and he prays to allow the above petition.

4. This Court has perused the counter affidavit wherein it has been stated that the reasons stated in the affidavit are denied as false. Earlier this second appeal was dismissed for non prosecution on 22.08.2017. This is the second application filed to restore the second appeal. This second appeal has been filed against the concurrent findings of the Trial Court as well as the First Appellate Court. There is no merit in this petition and the petitioner/appellant has filed this petition only with a view to delay the proceedings. Accordingly, he prays to dismiss the above petition.



5. Admittedly the second appeal was dismissed on 11.02.2022 i.e.,

during COVID-19 pandemic period. The Hon'ble Supreme Court in In Re:

cognizance for Extension of Limitation, **suo motu Writ Petition (C) No. 3 of**

2020 held as follows:-

"I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996. Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which



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prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."

6. Considering the submissions made by the learned counsels on both side, considering the facts and circumstances and the nature of the petition and also considering the reasons assigned ie. on medical grounds, this Court is inclined to allow the above petition, however, subject to the payment of costs of **Rs.3,000/- [Rupees Three Thousand Only]** payable by the petitioner/appellant to the respondent Nos. 1 to 3 directly on or before 04.10.2024.

7. Accordingly, this petition is allowed. Deletion has been done pursuant to the order dated 21.10.2024.

8. Call on 14.10.2024.

26.09.2024

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