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C.M.P. No. 19570 of 2024
in S.A.SR.No.105606 of 2024

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T.V. THAMILSELVI, J.

This petition has been filed seeking to condone the delay of 426 days in filing the above Second Appeal against the judgment and decree dated 28.02.2023 passed in A.S.No.72 of 2018, on the file of V Addl. District Judge, Coimbatore confirming the judgment and decree passed in O.S.No.132 of 2008 dated 07.06.2016 on the file of Principal Subordinate Judge, Coimbatore.

2. Mr.V.Venkatasamy, learned counsel for petitioners submitted that certified copy of judgment and decree passed in O.S.No. 132 of 2008 was not available, the same was obtained only on 15th July 2024 and after getting the papers, he gave the same to the counsel on record. Thereafter, he prepared the papers and filed the above Second Appeal on 01.08.2024. However, there is a delay of 426 days in filing the above second appeal arose, which is neither willful nor wanton. Therefore, he filed this petition to condone the delay in filing the above second appeal.



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3. Mr. S.B.Viswanathan, learned counsel for respondent appeared and raised strong objections in allowing this petition stating that no sufficient cause explained for the delay.

4. On seeing the facts, it reveals that due to the delay in obtaining certified copies of judgment and decree and due to lack of communication, the appellant was not able to engage a counsel and file the above Second Appeal within a time. Considering the facts and circumstances and on considering the reasons stated in the affidavit stating that the power agent alone had filed this petition and also the fact that the suit was filed seeking for the relief of partition between the family members and to give one more opportunity and also to avoid multiplicity of proceedings, this Court is inclined to allow this petition on condition that the petitioner shall pay a cost of Rs.3000/- (Rupees three thousand only) to learned counsel for respondent within a period of one week from the date of receipt of copy of this order. On such payment of cost, Registry is directed to number the Second Appeal if it is otherwise found to be in order and post the matter on 22.11.2024.

11.11.2024

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