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*C.M.P. No.23945 of 2023
in A.S. SR. No.22474 of 2023*

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**M.SUNDAR,J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**

(Order of the Court was made by M.SUNDAR, J.)

This petition has been filed to condone the delay of 5 days in preferring the appeal against the judgment and decree dated 26.10.2022 in O.S. No.369 of 2016 on the file of III Additional District Judge, Coimbatore.

2. The respondent is the plaintiff and he filed the suit for specific performance against the petitioner/defendant in O.S.No.369 of 2016. The Trial Court on considering the materials on record, directed the petitioner/defendant to pay a sum of Rs.30 lakhs with subsequent interest at the rate of 12% from the date of the sale agreement till the date of decree and thereafter 6% from the date of decree till realisation with costs.

3. Challenging the said judgment and decree passed by the Trial Court, the petitioner/defendant preferred the present appeal with a delay of 5 days.



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4. In paragraphs 5 and 6 of the supporting affidavit, the petitioner has stated the reason for the above delay and the said paragraphs read as under:

'5. I further submit that the above judgment and decree was passed on 26.10.2022. The copy application was filed on 27.10.2022 and stamps were called for on 14.11.2022 and stamps deposited on 16.11.2022. Thereafter, copy was made ready on 18.11.2022 and the same was delivered on 24.11.2022. I further submit that after receipt of the order copy on 24.11.2022 I was advised to prefer an appeal against the judgment and decree within 90 days and informed about the amount to be spent for filing appeal for which I have said that I will mobilize the amount within few weeks and file it. However, due to my ailment and bed rest under native treatment, I could not arrange money immediately and the same was arranged on 14.02.2023. Further, I was under the impression that the 90 days period is not over from the date of receipt of order copy.

6. Thereafter, after arranging money, immediately on 15.02.2022 I approached the present counsel but I could not hand over the original certified copy of judgment and decree and as I mistakenly left in my home in Coimbatore. In such circumstances, I returned to Coimbatore on next day i.e., on 16.02.2023 and the sent the required papers. In such circumstances, as holidays



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fell from 17.02.2023 to 19.02.2023, this appeal was filed on 20.02.2023. Later, I was informed that though the 90 days period will commence from the date of judgment made ready and not from the date of receipt of judgment and there is delay of 5 days in preferring appeal. Hence, the delay of 5 days occurred in filing the appeal.'

5. Ms.Vindhya Vasini, learned counsel for respondent submits that the petitioner has not given valid reason for filing the appeal with delay.

6. Considering the facts and circumstances of the case, grounds of appeal and the reasons for the delay given by the petitioner, we are of the view that the delay can be condoned. Accordingly, the delay is condoned and this petition is allowed. There shall be no order as to costs.

(M.S.J.) (K.G.T.J.)
22.01.2024

mmi/vsn

Note: Registry is directed to number the appeal if it is otherwise in order.



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