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C.M.P.No.22535 of 2024 in
Cross.Obj.S.R.No.105757 of 2024
and
A.S.No.112 of 2019

SATHI KUMAR SUKUMARA KURUP, J.

The learned Counsel for the Petitioner submits that the Petitioner had filed Cross Appeal in A.S.No.112 of 2019 against the judgment and decree dated 30.11.2018 passed in O.S.No.4981 of 2017 on the file of the learned XVII Additional Judge, City Civil Court, Chennai.

2. It is the contention of the learned Counsel for the Petitioner that Cross Appeal against the very same judgment and decree dated 30.11.2018 passed in O.S.No.4981 of 2017 was passed against him. He was not aware of the filing of the above Appeal by the Appellant in A.S.No.112 of 2019. He came to know about the same in the 1st week of August 2024 and entered appearance through his Counsel on 04.07.2024. Subsequently filed the above Cross Appeal on 09.08.2024. He was under the bonafide belief that the Cross Appeal was filed in time as the ground of Appeal was not served on him. Registry of this High Court pointed out that there is delay of 6 days in filing



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the Cross Appeal as if the same had not been filed within 30 days from the date of appearance.

3. On the direction of the Registry, only then, petition had been filed to condone the delay of 6 days. Therefore, he seeks to condone the delay of 6 days.

4. Learned Counsel for the Respondent in the petition who is the Appellant in A.S.No.112 of 2019 submits that what had been stated in the affidavit is not true. By the time, the Appeal in A.S.No.112 of 2019 was filed and summons were issued, Respondent in A.S.No.112 of 2019 was residing in Chennai. The summons returned as Respondents had *vacated* the premises and shifted his premises to Vellore. Therefore, the Appellant could not address him. He was forced to take paper publication. Paper Publication was caused on 03.02.2023. Therefore, it is the contention of the learned Counsel for the Respondent that the delay has to be explained by the Cross Objector from the date of publication of the notice. Therefore it is not 6 days, it is more than that. Also he would submit that even though the cross objector, the petitioner in C.M.P.No.22535 of 2024 is not residing in Chennai, he had filed



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petition as though he is still in Chennai. Therefore, the condonation of 6 days delay is not to be considered by this Court. He has to explain the delay from the date of paper publication.

5. Learned Counsel for the Cross Objector submits that he has to file Cross Objection only after receipt of summons/Notice along with memorandum of Appeal. He should be aware of the memorandum of Appeal. Mere summons/Notice will not be sufficient to file Cross Objection for which he relied on the decision in the case of ***M.Kr.RM.Ramaswami Chettiar vs. Om.Pl.RM. Ramanathan Chettiar*** in S.A.No.1918 of 1964 dated 01.11.1968 of this Court, particularly on the points below:

11. From a conjoint reading of the judicial principles governing the institution of cross objections, the following legal position emerges:-

a) The relevant Rules contemplate that a notice of the admission of an appeal is required to be served on the respondent or on his Advocate, informing the latter about the date fixed for the hearing of the appeal, and the same are required to be mandatorily accompanied by a copy of the memorandum of the appeal.

b) The service of the notice of the date of hearing is not a mere formality informing the respondent of the date alone, but also as to the effect of informing the scope of the appeal, enabling the



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respondent to determine whether to institute cross objections thereto, or not.

c) The service of the copy of the memorandum of appeal is also requisite, in order to facilitate the determination by the respondent in relation to the institution of cross objections.

d) The above requirements are in terms of the provisions of Order V Rule 2 CPC, which deal with the service of summons on a defendant in a suit and serve a similar purpose.

e) The requirement of being informed of the date fixed for hearing of the appeal is clearly stipulated in the instant Rule. The hearing contemplated thereunder is normally the final hearing of the appeal itself, although it permits some exceptions.

f) The exceptions carved out are in the event of the respondent appearing on caveat or putting in appearance and arguing the appeal on merits including for the purpose of an interim order and where the appeal is directed to be heard finally on a date fixed for the said purpose in his presence.

g) The date of the service of the copy of the memorandum of appeal is germane and relevant for the purpose of calculating the period of limitation in relation to the institution of cross objections, a fortiori for the reasons that it is only after receipt thereof, that the respondent has the opportunity to elect and determine whether he would like to file cross objections or not.

6. The submission of the learned Counsel for the Cross Objector cannot be accepted in the light of the affidavit filed by him showing his



address as still in Chennai, If that is point for consideration where the delay is beyond 6 days. Anyhow, for the interest of justice, the petition is allowed on condition of payment of Rs.2,000/- to the Appellant in A.S.No.112 of 2019 on or before 03.01.2025.

7. Registry is directed to number the Cross Objection if it is otherwise in order and post the case on 06.01.2025.

19.12.2024



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