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C.M.P. No. 23994 of 2024
in S.A.SR.No.76598 of 2024

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T.V. THAMILSELVI, J.

This petition has been filed seeking to condone the delay of 1741 days in filing the above Second Appeal against the judgment and decree dated 17.07.2019 passed in A.S.No.29 of 2018, on the file of Subordinate Judge, Rasipuram confirming the judgment and decree passed in O.S.No.165 of 2013 dated 02.01.2018 on the file of District Munsif Court, Rasipuram.

2. Before the trial court, he filed a suit seeking for the relief of declaration and permanent injunction in respect of suit property and the same was not granted. Against which, an appeal suit in A.S.No.29 of 2018 was filed and the same was also dismissed. Now, challenging the concurrent findings of the courts below, this Second Appeal was preferred.

3. Mr.T.S.Baskaran, learned counsel for petitioner submitted that without appreciating the evidence adduced on his side, the trial court erroneously dismissed the suit, but he is having valid defence. He would



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submit that due to lack of communication, he is not able to file the Second Appeal within a stipulated time. Only during the 2nd week of October 2024, he handed over papers to counsel on record and thereafter, the second appeal was filed on 14.10.2024. Hence, there is a delay of 1741 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.

3. Mr. A.Muthukumar, learned counsel for 1st respondent appeared and raised strong objections stating that without sufficient reasons, they have approached the court. Hence, they wanted to file objections.

4. On perusal of affidavit, the reasons stated by the petitioner in the affidavit for the delay is that due to lack of communication, the petitioner was not able to file the appeal within a stipulated time. So, on considering the facts and circumstances of the case and the fact that the petitioner is aged about 81 years and to avoid multiplicity of proceedings and to give one more opportunity, without prejudice to the objections raised by the 1st respondent, this court is inclined to allow this petition on condition that the petitioner shall pay a cost of Rs.5000/- payable to the learned counsel for 1st respondent, who is contesting defendant before the trial court and other



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respondents are remain exparte, within a period of one week from the date of receipt of copy of this order. Registry is directed to number the Second Appeal if it is otherwise found to be in order and post the matter on 12.12.2024.

5. The learned counsel for appellant is directed to serve typed set of papers on the learned counsel for 1st respondent.

02.12.2024

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N.B. : Issue order copy on 03.12.2024



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S.A.SR. No. 137720 of 2024

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