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C.M.P. No.25253 of 2023 in A.S.No.350 of 2017
and C.M.P.No.25262 of 2023 in A.S. No.345 of 2017

**C.M.P. No.25253 of 2023 in A.S.No.350 of 2017
and
C.M.P.No.25262 of 2023 in A.S. No.345 of 2017**

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

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

This common order will now dispose of captioned two 'Civil Miscellaneous Petitions' ('CMPs' in plural and 'CMP' in singular for the sake of convenience and clarity).

2. Captioned CMPs have been filed inter-alia under Order XLI Rule 19 of 'The Code of Civil Procedure, 1908' (hereinafter 'CPC' for the sake of brevity) qua prayer for readmission of captioned appeals which were dismissed for default on 09.08.2023.

3. Captioned CMPs were filed with delay. Therefore, it was accompanied by 'condonation of delay' ('COD' for the sake of brevity) petitions being C.M.P. Nos.25261 of 2023 and 25255 of 2023, both of which were allowed by Hon'ble Predecessor Division Bench in and by a common order dated 18.12.2023.



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4. To be noted, on 09.08.2023, when the captioned appeals were dismissed for default, the listing was under the cause list caption 'FOR DISMISSAL'.

5. Today, Mr.K.Sukumaran, learned counsel for petitioner and Mr.T.Devraj of M/s.PV Law Associates (Law Firm), learned counsel on record for first respondent/contesting respondent are before us.

6. Adverting to paragraph 2 of the support affidavit, learned counsel for petitioner submitted that it was solely a 'counsel error'. It was submitted that at the time of calling, learned counsel who had to represent the matter was in the midst of proceedings in another Court and therefore learned counsel missed the matter.

7. In response to the above submission, learned counsel on record for contesting first respondent submitted that in the light of readmission plea being predicated on 'counsel error' ground, he would only make a request for expediting hearing of the main appeals as they were ripe for final hearing on 09.08.2023 when they were dismissed for default. For the present, we refrain from saying anything on this plea but we make it clear that this plea will be considered in due course if a suitable CMP is taken out.



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8. Learned counsel for petitioner expresses regret for having missed the matter and made a fervent plea for readmission of the captioned appeals.

9. Mr.K.Sukumaran, learned counsel for the appellants in A.S. Nos.898 of 2018 and 899 of 2018 which are at the instance of purchasers *pendente lite* which also stood dismissed as a consequence vide aforementioned 09.08.2023 dismissal order are before us. Learned counsel submits that if the readmission prayer is acceded to, his appeals i.e., A.S.Nos.898 of 2018 and 899 of 2018 will also stand resuscitated. There can be no two opinions/views about this submission.

10. In the light of the narrative thus far, considering the facts and circumstances of the case on hand, this Court is of the considered view that the reason for non-representation on 09.08.2023 and the articulation of the same in the hearing are good enough for readmission of the captioned appeals. To be noted, this considered view is in the light of facts of the case on hand and therefore it would not apply to all cases as a across the Board precedent.



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11. Ergo, sequitur is, captioned CMPs are ordered as prayed for by saying that captioned appeals i.e., A.S.Nos.350 of 2017 and 345 of 2017 stand re-admitted. Consequently, A.S.Nos.898 of 2018 and 899 of 2018 being appeals at the instance of *pendente lite* purchasers will also get resuscitated and they also stand re-admitted.

12. There shall be no order as to costs.

mmi

(M.S.J.) (K.G.T.J.)
02.01.2024
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