



C.M.P.No.27833 of 2023

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in
S.A.Sr.No.141200 of 2022

P.T.ASHA, J.,

This petition is filed to condone the delay of 1,034 days in filing the above appeal in S.A.SR.No.141200 of 2022. The second appeal arises from and out of the suit for declaration and injunction filed by the respondent herein in O.S.No.293 of 2004 on the file of the Principal District Munsif Court, Puducherry. The suit was decreed and the appeal in A.S.No.10 of 2007 filed by the defendants was also dismissed and therefore, the defendants had come forward with this second appeal.

2. However, this appeal has been filed by them with enormous delay. In the affidavit filing in support of this condone delay petition, the petitioners/appellants would submit that originally the suit had been decreed and the father of the petitioners/appellants had filed an appeal in A.S.No.10 of 2007 on the file of the Principal Sub Court, Puducherry. The learned Judge had allowed the appeal and remanded the matter back to the Trial Court for framing issues with regard to the 'B' schedule property as to whether the 'B' schedule property is situated on the eastern side or on the



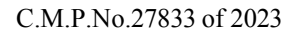
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southern side of the 'A' schedule property. The appeal in C.M.A.No.2921 of 2007 was filed before this Court and ultimately, the C.M.A.No.2921 of 2007 was allowed and this Court by an order dated 17.07.2007, had ordered the Lower Appellate Court to frame the issue and pass orders.

3. After the order in C.M.A.No.2921 of 2007, the Lower Appellate Court had framed the issue as directed by this Court and after recording the evidence and also examining the Advocate Commissioner and Deputy Surveyor as Court witnesses, the Lower Appellate Court had dismissed the appeal in A.S.No.10 of 2007 by judgment and decree dated 03.10.2019.

4. Challenging this judgment and decree, the defendants are before this Court.

5. The petitioners/appellants would submit that after the appeal in A.S.No.10 of 2007 was dismissed by judgment and decree dated 03.10.2019, the father of the petitioners/appellants had filed a review before the Lower Appellate Court to review the judgment and decree in A.S.No.10



6. A counter has been filed by the respondent, in which, there is no serious contest except for stating that the reasons given for the delay is completely without any merits and has not been properly explained. He had stated that the Covid-19 would not apply to the instant case.

7. The fact that is to be considered is whether the delay has been properly explained by the petitioners. A perusal of the affidavit would clearly show that the petitioners and prior to them, their father have been diligently following up the case and it is only after the Covid-19 pandemic, there is a delay. No doubt, in the relevant period of time, the moratorium offered by the Hon'ble Supreme Court is not available.

8. Being satisfied with the reasons stated in the affidavit filed in



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support of this petition, this petition is allowed and the delay of 1,034 days

in filing the above appeal in S.A.SR.No.141200 of 2022 is condoned.

9. The Registry is directed to number the appeal, if it is otherwise in order and print the name of Mr.R.Natarajan, learned counsel for the sole respondent when the matter is listed for admission.

27.02.2024

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P.T.ASHA, J.,

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