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C.M.P. No. 28212 of 2023
in
S.A. Sr. No. 147110 of 2023

P.T.ASHA, J.

The above application is filed for condoning the delay of 529 days in preferring the appeal.

2. The petitioners are the defendants in a suit for recovery of money advanced on a promissory note. The defense to the said suit is that the defendants who are the legal representatives of Jayaraman the person who had executed the promissory note had no knowledge about the execution of the document and further it is their case that the said Jayaraman had fallen into bad ways and was living away from the family and it was the 1st defendant who was taking care of the family.



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3. The defendants would also submit that the promissory note is a fabricated one prepared at the behest of one Kamalam who was already having dispute with defendants in respect of the property. The defendants have further submitted that they had not succeed to any estate of the deceased Jayaraman.

4. The suit O.S.No.110 of 2004 was decreed by the Additional Sub Judge, Kallakurichi. The defendants have challenged the said Judgement and Decree in A.S.No.6 of 2021 on the file of the III Additional District Court, Kallakurichi. The learned Judge also confirmed the Judgement of the Trial Court. The Second Appeal has thereafter been preferred by the defendants. However, in the institution of the said appeal, the aforesaid delay of 529 days had occurred.

5. In the affidavit filed in support of the said application, the defendants would submit that in the month of November 2021, they had received an information from the counsel in the appellate Court



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that he had applied for the certified copies of the Judgement and Decree and would keep them informed as soon as it is made ready and enable them to file the Second Appeal. The defendants were under the impression that they would be informed and since no information was received till May 2022, the defendants had contacted the counsel. The learned counsel informed them that the certified copy was received as early as in December 2021 but he had misplaced the same in his office and the same could not be traced.

6. The learned counsel had also advised the defendants to file an appeal in the month of July 2022 and he had filed for the certified copies a fresh. Meanwhile, the appellants had approached the learned counsel here for preferring the Second Appeal and their counsel has also purchased the necessary Court fees for preferring the Second Appeal. Thereafter, the deponent the 1st defendant who had taken care of the family was unable to contact their counsel at Chennai to further proceed with the filing of the Second Appeal, as a result it is only in September 2023 that they were able to file the



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Second Appeal.

7. The fact that the Court fee had been purchased in the month of July 2022 is evident from a perusal of the Court fees that has been paid into the Court which indicates that a sum of Rs.6,980/- which is a Court fee paid in the appellate Court had been purchased by the counsel for the appellant on 04.07.2022.

8. Therefore, considering the fact that sufficient reasons have been given in the affidavit filed in support of the petition to condone the delay and there is no appearance on the side of the respondent to contest, the petition is allowed.

9. The Registry is directed to number the appeal, if otherwise in order.

18.01.2024

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