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C.M.P. No. 27638 of 2023
in A.S.SR. No.147209 of 2023

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

(Order of the Court was made by K.GOVINDARAJAN THILAKAVADI, J.)

This appeal is directed against the judgment and decree dated 31.01.2023 made in O.S.No.110 of 2017 on the file of the Principal District Judge, Krishnagiri with a delay of 153 days. The petitioners have filed the petition in C.M.P. No.27638 of 2023 for condonation of delay stating that the delay occurred due to the reasons stated in the support affidavit in paragraphs 5 ad 6 and the same are extracted hereunder:

'5. I further submit that I have applied for certified copy of the Judgment and Decree on 01.03.2023 and the copies were made ready on 10.04.2023. Immediately, my counsel informed me that the appeal should be filed within ninety days from that date. But I could not contact my counsel and mobilize money for paying court fee enabling to file appeal before this Hon'ble Court within the prescribed time since I was suffering from severe viral fever. However, I am filing this appeal today with delay. This is neither wilful nor wanton, but due



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to the above said bonafide reason. I am advised to state that I am having fair chance of success in this appeal. Unless the delay occurred inadvertently is condoned, I will be put to irreparable loss, hardships and damages.

6. I humbly submit now I am filing this appeal before this Hon'ble Court on various grounds. I crave leave of this Hon'ble Court to treat the Memorandum of Grounds of First Appeal as part and parcel of this affidavit. Now the respondents herein are taking hectic steps to execute the decree taking advantage of the fact that the decree rendered Judgments in their favour. Further I am advised to state that I am having fair chance of success in the above appeal before this Hon'ble Court. Since I have made a prima facie case by adducing tangible evidence before the trial Court and the balance of convenience is in favour of the defendant, it is desirable to stay the operation of the decree. Otherwise, I will be put to irreparable loss, hardship and damages.'

2. According to the learned counsel appearing for the petitioners, the petitioners were unable to mobilise funds for preferring the present appeal and hence the delay has occurred.

3. On the other hand, learned counsel for respondents 3 and 4 would submit that petitioners ought to have been more diligent in



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preferring the appeal in time and the grounds set out in the affidavit are not sufficient to condone the delay. However, in the interest of justice and considering the facts and circumstances of the present case, the explanation set out in support affidavit is found to be reasonable. Therefore, this petition is allowed and the delay is condoned. There shall be no order as to costs.

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

26.02.2024

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