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C.M.P.No. 629 of 2024 in
S.A.No.865 of 2005

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T.V. THAMILSELVI, J.

This petition has been filed seeking to condone the delay of 622 days in filing the petition to restore S.A.No.865 of 2005, which was dismissed for non-prosecution on 30.07.2021.

2. Mr.P.Dinesh Kumar, learned counsel for petitioners/appellants submitted that due to unaware of proceedings as well as due to lack of communication and also due to illness, the 1st petitioner is not able to file a petition to declare him as major and also with great difficulty, he has obtained the date of death of 2nd and 4th appellants. Thereafter, they came to know that the above appeal was dismissed for non-prosecution on 30.07.2021, thereby he was hastening to file the present petition to restore the appeal. Hence, the petition to restore was not filed in time. In view of the same, there is a delay of 2022 days in filing the above petition. Hence, he has filed the above petition to condone the delay and to restore the S.A.



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3. Mr.P.I.Thirumoorthy, learned counsel for respondents 2 to 6 raised strong objections stating that the 1st petitioner was already aware of the fact that he became a major, besides inspite of several opportunities given by this court, they have not taken steps to amend the cause title. Hence, he prayed to dismiss this petition.

4. On perusal of records, it reveals that already the execution proceedings was initiated to execute the decree and in order to condone the delay, the present petition has been filed. Furthermore, on seeing the facts, it would clearly reveals that inspite of several opportunities was given to the 1st petitioner to amend the cause title and though the 1st petitioner became major, even in their affidavit, they have stated that he is aged about 29 years. But all these years, they have not taken steps to amend the cause title and this Second Appeal was filed by mentioning his name as minor. Moreover, as the defendants, they are having valid defence to contest the suit, which was filed by the plaintiff seeking for the relief of declaration and if the above second appeal is not restored, their right to defend the case



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would be defeated. Therefore, this Court is inclined to allow this petition and to restore the above second appeal on condition that the petitioners shall pay a cost of Rs.5000/- payable to the learned counsel for respondents 2 to 6 within a period of one week from the date of receipt of copy of this order.

5. In spite of notice, there is no representation on the side of 1st respondent.

6. Post the matter on 30.09.2024 for filing better affidavit.

20.09.2024

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