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C.M.P.No.29587 of 2023
in A.S.No.1070 of 2012

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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 in A.S.No.1070 of 2012 is preferred against the judgment and decree in O.S.No.38 of 2011 on the file of II Additional District Judge, Thiruvallur at Poonamallee, dated 02.11.2012. The said appeal was dismissed for default for non-prosecution. Hence, the appellant/plaintiff filed the above petition in C.M.P.No.29587 of 2023 to condone the delay of 1722 days in filing the application to restore the appeal suit in A.S.No.1070 of 2012 which was dismissed for non-prosecution on 11.02.2019.

2.In the support affidavit, it is submitted that, the wife of the petitioner was the defendant in the suit. Due to kidney failure and coronary heart disease, his wife passed away on 04.10.2022 after filing the said appeal suit. The petitioner was not aware of the pendency of the



appeal. Thereafter, through his counsel, the petitioner came to know about the dismissal of the appeal suit for non-prosecution. For the aforementioned reason the petitioner was unable to file the application to restore the appeal suit in time. Hence, the delay was neither willful nor wanton and if the delay is not condoned, the petitioner would be put to grave hardship.

3.Though the cause list shows that the service of notice to respondents 1 & 2 is awaited, the counsel for respondents 1 & 2 are before this Court. The learned counsel for the respondents would submit that the petitioner has not made out any reasonable cause to condone the delay.

4. We have heard Mr.S.Chandrasekar learned counsel appearing on behalf of counsel on record for the appellant and Mr.T.V.Krishnakumar, learned counsel appearing for the 1st respondent and Mr.S.Sujesh Palande, learned counsel appearing on behalf of counsel on record for the 2nd respondent and records perused.

5.On perusal of the explanation set out in the support affidavit in



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paragraph Nos.3, 4 & 5, we do not find any negligence, deliberate or gross inaction or lack of bonafide on the part of the petitioner. In our considered opinion, the explanation offered found to be sufficient, on the facts and circumstances of the case on hand, nature of the instant matter and the manner in which parties are circumstanced.

6.For the aforementioned reason, C.M.P.No.29587 of 2023 is allowed. The appeal suit in A.S.No.1070 of 2012 is restored. The Registry is directed to list the matter in accordance to chronological order. No costs.

[M.S.J.,]

[K.G.T.J.,]

26.02.2024

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