



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-09-2025

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THE HONOURABLE MR.JUSTICE P.B. BALAJI

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CMP.No.19076 of 2025

& A.S.No.562 of 2022

Harish Gupta

Petitioner(s)

Vs

Ashish Gupta

Respondent(s)

Prayer: The Civil Miscellaneous Petition filed under Order XXXXI Rule 19 of CPC, to restore the above appeal in A.S.No.562 of 2022 which was dismissed for default on 11.07.2025.

For Petitioner(s): Mr.C.Deepak Kumar

For Respondent(s): Ms.Anisha Gupta

ORDER

The Civil Miscellaneous Petition has been filed by the appellant to restore the appeal to file.

2.The appeal has been dismissed by this Court on 11.07.2025. The learned counsel for the petitioner has stated that on 11.07.2025, the learned counsel appearing for the appellant was engaged in another Court and he was unable to appear, when the matter was called and dismissed for non-



prosecution.

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3.The learned counsel for the respondent would however raise strong objection to the application filed to restore the appeal to file. She would state that the petitioner has been in the habit of allowing matters to be dismissed for non-prosecution and thereafter, filing applications to set aside the ex-parte orders, only in order to protract the proceedings. She would also invite my attention to the order dated 19.08.2025 in CRP.No.3038 of 2025, where the very same petitioner's conduct has been taken note of by this Court and the application to restore the application seeking to set aside the dismissal order came to be dismissed and confirmed by this Court, holding that the petitioner has not been vigilant and it appears to be not interested in contesting the case on merits.

4.I have carefully considered the submissions advanced by the learned counsel on either side.

5.The present application has been filed within 30 days from the date of dismissal of the appeal for non-prosecution. The only reason that is stated is that the counsel was held up in the other Court and he could not represented the matter and the appeal was listed for final disposal. The application having been in time, I am inclined to give one more opportunity to the petitioner/appellant to prosecute the appeal on merits.

6.As far as reliance being placed on the order in CRP.No.3038 of



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2025 by the learned counsel for the respondent, it was the case where the very same petitioner had filed an appeal and the appeal came to be dismissed for default. The application filed to restore the appeal also came to be dismissed for default and in such circumstances, this Court found that the petitioner has not been vigilant. However, as already noticed, the present application is in time and hence, I am inclined to accept the reasons assigned in the affidavit in support of the CMP.

7. In view of the above, the Civil Miscellaneous Petition is ordered and A.S.No.562 of 2022 is restored to file.

8. Registry shall post the appeal suit for final disposal on 09.10.2025.

24.09.2025

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To

The IV Additional Judge, City Civil Court, Chennai.

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