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*CMP.No.1904 of 2025
in A.S.No.349 of 2018*

C.M.P No.1904 of 2025

and

A.S.No.349 of 2018

V.SIVAGNANAM,J.

This petition is filed to condone the delay of 445 days in filing the petition to set aside the order dated 21.09.2023, for non payment of pleading bill amount as shown in the cause list dated 21.09.2023 on or before 13.10.2023 made in A.S.No.349 of 2018, to restore the same on the file of this Court.

2.The learned counsel appearing for the petitioner contended that the plaintiff/respondent filed a suit for partition of three shares, in which, the defendants/petitioner along with his mother filed a written statement and contested the suit claiming the property being the absolute property of the defendants and plaintiff is not entitled for any share in the plaint schedule property. The Trial Court after considering the evidence on record, passed a preliminary decree. Aggrieved by the judgment and decree, the defendants have filed this appeal. For non payment of pleading bill amount, the appeal was dismissed on 21.09.2023. The learned counsel



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further contended that the erstwhile counsel of the petitioner became ill and could not attend the matter on the dates of hearing and not paid the pleading bill amount and also not informed the same to the petitioner. Hence, there is a delay of 445 days in filing the application. He further submitted that there is no negligence on the part of the petitioner and the petitioner should not be penalized and prayed to condone the delay.

3.The learned counsel appearing for the respondent filed a counter and objected the petition. He submitted that the delay is not properly explained and further, blaming the Advocate is not a permissible one. This Court as well as the Supreme Court had on several cases not entertained these type of pleadings and rejected the same. To support his argument, he relied upon the following judgments:

- (a) *SLP.Dr.No.25784 of 2024 in Nitin Mahadeo Jawale & Ors. Vs. Bhaskar Mahadeo Mutke.*
- (b) *CRP (MD) No.691 of 2023 in Saminathan Vs. Posangu and Ors.*
- (c) *CMP No.10956 of 2019 in AS Sr.No.23260 of 2019 in P.Ramakrishnan Vs. P.Alamelu and four others.*



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4. I have considered the matter in the light of the submissions made on either side and perused the materials available on record.

5. On perusal of the records, it is seen that the appeal is dismissed for non payment of pleading bill amount as shown in the cause list dated 21.09.2023 on or before 13.10.2023. The reason for non payment of pleading bill, according to the petitioner is that his counsel became ill and did not inform the matter to the petitioner and he has not appeared for the matter on the date of the hearing. The learned counsel for the petitioner submitted that he is having a good case and further stated the principle that rules of limitation are not meant to destroy the rights of the parties. They are meant to see that the parties do not resort to dilatory tactics, but seek their remedy promptly.

6. In this case, the erstwhile counsel for the petitioner failed to attend the Court and also failed to pay the pleading bill amount. The parties cannot be penalized for the same. Further, the learned counsel for the



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respondent relied on the above said judgments and stated that throwing the entire blame on the head of the Advocate is not a valid reason. But, if sufficient reasons for non payment of pleading bill amount is given, it could be accepted. One should not forget the principle that rules of limitation are not meant to destroy the rights of the parties. They are meant to see that the parties do not resort to dilatory tactics, but seek their remedy promptly.

7.I do not find any dilatory tactics on the part of the petitioner and hence, the reasons stated in the affidavit is accepted and the petition is allowed.

sli

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