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CMP(MD) NO. 11704 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17-11-2025

CORAM

THE HONOURABLE MS.JUSTICE R. POORNIMA

**CMP(MD) NO. 11704 of 2024 IN
CMA(MD) SR NO. 60189 OF 2024**

Glory

Petitioner

Vs

1. Kumaradhas
2. Sheela
Respondent(s)

For Petitioner : Mr. S.Krishnan
For Respondent : M/s. S.C.Herold Singh

Prayer in CMP(MD).No.11704 of 2024: Petition filed under Section 5 of the Limitation Act to condone the delay of 490 days for filing appeal against I.A.No.3 of 2023 in O.S.No.271 of 2022 Honourable Principal District Judge, Kanyakumari at Nagercoil dated 4.1.23.

Prayer in CMA(MD)SR.No.60189 of 2024 : Civil Miscellaneous Appeal filed under Order 43 Rule 1(r) and 2 r/w. Section 104 of CPC against the docket order, dated 04.01.2023 passed in I.A.No.3 of 2022 in O.S.No.271 of 2022 on the file of the Principal District Court, Kanyakumari at Nagercoil.

ORDER

CMP (MD) No.11704 of 2024 has been filed to condone a delay of 490 days in filing the above appeal against the order dated 04.01.2023



made in I.A. No.3 of 2023 in O.S. No.271 of 2022, on the file of the Principal District Judge, Kanyakumari at Nagercoil.

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2. The reason stated for the delay is that the respondents / plaintiffs filed a suit for specific performance against the petitioner / defendant and obtained an ex parte interim order restraining the petitioner from alienating the suit property to third parties. It is contended that the plaintiffs, without effecting proper service on the defendant, obtained the ex parte order behind his back. Challenging the same, the present appeal has been filed by the petitioner / defendant seeking to condone the delay.

3. During the course of arguments, the learned counsel appearing for the petitioner relied upon the petition and the order passed in I.A. No.3 of 2022 by the trial Court, namely, the Principal District Court, Kanyakumari at Nagercoil. In the docket order, it is mentioned as “Court Await” and “Post Await” “Memo filed respondent called absent. Set ex parte. Petition allowed”. On this ground, it was contended that the order passed by the learned Judge is not proper.

4. This Court called for records from the trial Court to verify whether notice issued to the petitioner / respondent had been duly served. On perusal of the records, it is seen that I.A. No.3 of 2022 in O.S. No.271 of 2022 was filed by the respondents / plaintiffs seeking an order of



interim injunction restraining the petitioner / defendant from alienating the suit property. The said application was taken on file, private notice was ordered to the petitioner / defendant, and the matter was posted on 04.01.2023. The endorsement made by the Court Clerk in the docket reads “Court Await” and “Post Await”. Accordingly, the Court had ordered private notice to the petitioner. The respondents / plaintiffs thereafter filed a memo enclosing the private notice cover, which was returned as “refused” on 14.12.2022. In view of the same, the Trial Court passed an order of ex parte interim injunction.

5. The petitioner further contended that the address was not properly mentioned in the Interlocutory Application. However, it is seen that the petitioner received summons in the main suit at the very same address, which was filed before the Trial Court. Despite this, the petitioner has now falsely represented before this Court that proper notice was not served.

6. Since the notice was duly served and the petitioner / defendant refused to receive the same, it amounts deemed service resulting in its return to the Court. The reasons stated in the accompanying affidavit are neither properly explained nor acceptable and amount to false representation. Therefore, this Court is not inclined to allow the petition.

7. Accordingly, this petition is dismissed with costs. Consequently,



R. POORNIMA, J.,

trp

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the Civil Miscellaneous Appeal is dismissed at the SR stage itself.

17-11-2025

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