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A.No.6090 of 2025
in
A.No.5635 of 2024
in
A.No.720 of 2023
in
E.P No.119 of 2019

MASTER
15.04.2026

ORDER

1. This application is filed by the applicant/1st respondent/Judgment debtor seeking permission of this court to file additional counter affidavit in A.No.5635 of 2024. Heard both side counsels. On perusal of the material records it is seen that A.No.720 of 2025 was filed by the 1st respondent/decreed holder for delivery of possession of the suit property by issuing delivery warrant which was dismissed for non-prosecution on 17.11.2023. Thereafter, the 1st respondent has filed an application to condone the delay in filing application to restore A.No.720 of 2023 which was numbered in A.No.2056 of 2024 and the same was allowed by this court on 18.10.2024. Thereafter, the 1st respondent has filed A.No.5635 of 2024 to set aside the order of dismissal and restore A.No.720 of 2023 which is pending in the stage of argument. At that time the present application filed by the applicant/1st respondent in A.No.5635 of 2024 seeking permission to file additional counter and the reason stated by him is that he was served with a copy of the affidavit containing two prayers. One is to condone the delay of 40 days in filing the restoration application and the other is to restore the application in A.No.720 of 2023 and he was under the impression that only the application to condone the delay was numbered and coming up for hearing based on which he has filed his counter in A.No.5635 of 2024. Only when the case was posted for enquiry he came to know that the application to condone the delay was already



allowed by this court. Now, the present application is only to set aside the order of dismissal and restore the application A.No.720 of 2023. In such and such circumstances, it is necessary for him to file an additional counter denying the allegations made in the set aside application.

2. The 1st respondent has filed his counter in detail and has discussed many averments which goes to the merits of the case. Where as the present application is only to decide whether the applicant is entitled to file his additional counter in A.No.5635 of 2024. One of the main contention which was raised by the 1st respondent is that the applicant/1st Judgment debtor has already canvassed all the contentions made by him in his additional counter in CMP No.989 of 2022 in OSA No.340 of 2008 which was filed by the Judgment debtor to condone the delay of 4811 days and the same was also rejected by the Hon'ble High Court.

3. On perusal of the records, it is seen that the 1st respondent/decreed holder has filed A.No.5635 of 2024 to set aside the order of dismissal in A.No.720 of 2023 which is in the stage of both side arguments. At this juncture the present application filed by the applicant/1st Judgment debtor to receive in additional counter. Considering the fact that the applicant/Judgment debtor has filed his additional counter along with his application. This court is inclined to allow this application on condition that the applicant/1st Judgment debtor who is the 1st respondent in A.No.5635 of 2024 has to submit his arguments in A.No.5635 of 2024 in the next hearing without fail.

Accordingly, this application is allowed. No cost.



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