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Allimuthu, vs Selvaraj,

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Court : Chennai Orders

Decided On : Jan-07-2025

Judge : Honourable Mrs Justice T.V.Thamilselvi

Appeal No. : CMP/27040/2024

Appellant : Allimuthu,

Respondent : Selvaraj,

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-01-2025

CORAM

THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI CMP NO. 27040 of 2024 IN SA NO. 571 OF 2007 Allimuthu Appellant(s) Vs Selvaraj and another Respondent(s) For Appellant(s): Mr.Sunil Kumar R For Respondent(s): Mrs.R.Meenal for R1

ORDER

This Civil Miscellaneous Petition has been filed seeking to condone the delay of 380 days in filing the petition to restore S.A.No.571 of 2007, which was dismissed

for non-prosecution on 09.03.2023.

2. Mr.R.Sunil Kumar, learned counsel for petitioner/appellant

submitted that the petitioner had filed the above Second Appeal, in which this Court ordered notice and even after taking effective steps, the service could not be reached to 2nd respondent. On 24.02.2023 this court passed a conditional order to take a notice to 2nd respondent on or before 09.03.2023 and if it is not complied, the Second Appeal stand dismissed. Thereafter, he has preferred a restoration petition and the Registry returned the petition

and the same was represented on 08.05.2024. However, unfortunately, the papers were mixed up with other case bundle and after due search, it was traced out. Hence, the petition to restore was not filed in time. In view of the same, there is a delay of 380 days in filing the above petition. Hence, he has filed the above petition to condone the delay and to restore the S.A.

3. Mrs.R.Meenal, learned counsel 1st respondent appeared and raised objections stating that to drag on the proceedings, this petition has been filed.

4. Considering the facts and circumstances, and the fact that this

Second Appeal is pending from the year of 2007 and to avoid multiplicity of proceedings and the reasons stated by the petitioner in the affidavit seems to be justifiable one and also the fact that if the above second appeal is not restored, her right to defend the case would be defeated, this Court is inclined to allow this petition and to restore the above second appeal without prejudice to objections made by the 1st respondent.

5. Post the matter on 29.01.2025. rpp

T.V.THAMILSELVI, J.

rpp C.M.P.No. 27040 of 2024 in S.A. No. 571 of 2007 (2/2)

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