

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).30431/2010

(From the judgement and order dated 05/01/2010 in CRP No.571/2006
of The HIGH COURT OF MADRAS)

JOHN AND OTHERS. Petitioner(s)

VERSUS

LILLY & ORS. Respondent(s)

(With prayer for interim relief and office report)

Date: 09/05/2012 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Petitioner(s) Mr. R.Balasubramanian, Sr. Adv.
Mr.V.Balaji, Adv.
Mr. Vinod Mehta, Adv.
Mr. Narendra Kumar,Adv.

For Respondent(s) Mr. TR.B.Sivakumar, Adv.
Mr. K.V. Vijayakumar,Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.
The appeal is allowed in terms of the signed order.

(Shashi Sareen)
Court Master

(Veena Khera)
Court Master

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 4396 OF 2012
(Arising out of SLP(C) No. 30431 of 2010)

JOHN AND OTHERS ... Appellant(s)

Versus

LILLY & ORS. ... Respondent(s)

O R D E R

Leave granted.

This appeal arises out of an order dated 05.01.2010 passed by the High Court of Madras at Madurai whereby Civil Revision Petition No. 571 of 2006 filed by the appellants against an order refusing to condone the delay of 164 days in the filing of an application for restoration of a suit dismissed for non-prosecution has been dismissed.

We have heard learned counsel for the appellants and perused the orders under challenge. The trial court as also the High Court have apart from examining whether there was any explanation for the delay in the filing of the application for restoration, gone into the question whether the suit filed by the appellant was maintainable and held that the same was not maintainable in the light of the judgments and orders in two earlier suits filed in regard to the same subject matter and between the same parties.

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Mr. R.Balasubramaniam, learned senior counsel for the appellants argued and in our opinion rightly so that the court below were in error in going beyond the application for condonation and holding that the suit sought to be restored was itself not maintainable. The trial court and the High Court ought to have simply examined whether there was a reasonable explanation for the delay in the making of the application. The larger issue whether or not the suit filed by the appellant was maintainable was a matter which could be examined on its merits after the suit had been restored and after the parties were given an opportunity to address arguments in regard to the same. There is no gain saying that if the suit was eventually dismissed on the ground that the same was not maintainable, the plaintiffs would have had the advantage of filing an appeal against the decree so passed which remedy would not be available to them in case the High Court went into the question of

maintainability of the suit in proceedings for restoration.

That apart the trial court and the High Court have both in our opinion taken a rather narrow and pedantic view of the prayer for condonation and declined condonation on a hyper technical approach adopted in the matter. The application for condonation was supported by an affidavit and ought to have been allowed.

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We accordingly allow the appeal, set aside the impugned orders and restore the suit filed by the plaintiffs to its original number. Since the matter has been pending for a considerable period and this appears to be a third round of litigation between the parties, the trial court would do well to expedite the matter frame an issue regarding the maintainability of the suit and determine the same as a preliminary issue after giving opportunity to place certified copies of the judgment delivered in the earlier suits. The trial court would then determine the issue regarding the maintainability of the suit uninfluenced by the observations made by it in its earlier order or the observations made by the High Court. No costs.

.....J.
(T.S.THAKUR)

.....J.
(GYAN SUDHA MISRA)

New Delhi,
May 09, 2012