



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)**

Tuesday, the Thirty First day of August Two Thousand and Twenty One

PRESENT:

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The Hon'ble Mr. Justice A.D. JAGADISH CHANDIRA

CMP(MD)No.5887 of 2021

in

TR.CMP(MD)NO.94 of 2019

Gokhila Devi ... Petitioner/Respondent.

Vs

R.Elavarasan ... Respondent/Petitioner.

Prayer in CMP(MD)No.5887 of 2021:

Civil Miscellaneous Petition filed under Section 5 of Limitation Act to condone the delay of 547 days in filing Restore petition made in TR.C.M.P.(MD)No.94 of 2019 dated 24.09.2019 and thus render justice.

Prayer in TR.CMP(MD)No.94 of 2019:

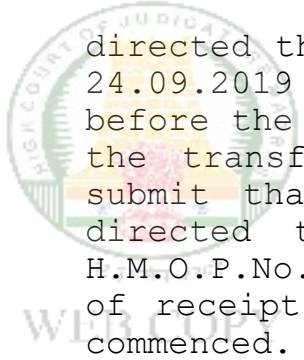
Transfer Civil Miscellaneous Petition is filed under Section 24 of C.P.C., to withdraw and transfer the petition in H.M.O.P.No.158 of 2018 pending on the file of the Sub Court, Palani to Family Court, Madurai.

ORDER:- This Civil Miscellaneous Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.R.Karuppiyah, Advocate for the Petitioner and of Mr.T.Lajapathi Roy, Advocate for the Respondent, this Court made the following order:

This petition has been filed to condone the delay of 547 days in filing restore petition made in Tr.C.M.P.(MD)No.94 of 2019, dated 24.09.2019.

2.The learned counsel for the petitioner would submit that due to poverty and the economical problem coupled with her health condition, she was unable to meet her counsel and thereby, she was unable to file a petition to restore within a period of 30 days. Thereafter, the Courts were closed for Covid-19 and there had been a delay of 547 days in filing the restoration petition and thereby, he would seek for condoning the delay.

3.The learned counsel for the respondent would submit that the case was listed for hearing on 18.09.2019 and on that day, the respondent did not appear before the Court. Thereby, this Court had



directed the matter to be listed under the caption for dismissal on 24.09.2019 and even on that day also, the petitioner did not appear before the Court. Thereby, this Court had passed an order dismissing the transfer application for non-prosecution. He would further submit that this Court, while dismissing the petition, had also directed the learned Subordinate Judge, Palani to dispose of H.M.O.P.No.158 of 2018 within a period of six months from the date of receipt of a copy of that order and thereafter, the trial has commenced. He would further submit that after the trial has commenced, the husband's side evidence has been completed and the case now stands posted for cross-examination of the witnesses and at this stage the transfer civil miscellaneous petition is restored it would cause hardship to all parties.

4. Heard the learned counsel on either side and perused the materials available on record.

5. At this juncture, the learned counsel for the petitioner would submit that the petitioner is unable to maintain herself and despite the lower Court awarding maintenance to the petitioner, the respondent has not paid the maintenance to the petitioner so far.

6. The learned counsel for the respondent undertakes that he will deposit the arrears before the concerned Court within a period of three weeks. He would further submit that the respondent is also ready to co-operate with the progress of the trial before the trial Court and he would also ensure that the witnesses will be present before the Court on the date fixed by the trial Court for cross-examination.

7. Recording the above submissions, this Court, being not satisfied with the reasons, this petition is dismissed. The trial Court shall take steps to dispose of the trial as expeditiously as possible, preferably, within a period of four months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sjj

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



TO

The Sub Judge, Palani.

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ORDER DATED : 31/08/2021

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ORDER

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CMP (MD) No.5887 of 2021

in

TR.CMP (MD) NO.94 of 2019

Giving Direction and etc.

as stated within.

KB (16.09.2021) 3P 2C