



C.M.P.No.6079 of 2023

C.M.P.No.6079 of 2023
in C.M.A.Sr.No.96987 of 2022

J.NISHA BANU, J.,

and

D.BHARATHA CHAKRAVARTHY, J.,

This application has been filed to condone the delay of 3087 days in preferring the Civil Miscellaneous Appeal.

2. Heard Mr.Sankarasubbu, learned counsel appearing for the petitioner and Mrs. Thenmozhi Shiva Perumal, learned counsel appearing for the respondent.

3. Learned counsel for the petitioner would submit that the delay has occurred only on the ground of filing of restoration petitioner in CMP.No.21480 of 2021, for the dismissal of C.R.P.No.949 of 2016 for non-prosecution and the same was dismissed on 15.03.2022 by recording that the Civil Revision Petition is not maintainable and aggrieved by the same, the petitioner has filed the appeal. Therefore, the delay is neither willful nor wanton. The petitioner has already deposited a sum of Rs.25,00,000/- and therefore, the delay has to be examined in this case and it has to be condoned. Moreover, he would submit that without even directing the parties to file an affidavit of Assets and Liabilities as directed by the Hon'ble Supreme Court of India, the Trial Court has passed the award of permanent



alimony to both the wife and son. He would submit that the wife is gainfully employed and not at all eligible for the sum awarded by the Trial Court.

4. Per contra, the learned counsel appearing for the respondent would submit that as on date, the arrears of amount with interest has crossed even Rs.1 crore and the wife and child is languishing without realisation of any amount and therefore he would pray such huge delay of 3087 days cannot be condoned.

5. We have considered the rival submissions made on either side and perused the materials available on record.

6. We are on the stage of condonation of delay, however, the delay is 3087 days. It can be seen that the CMA has been filed against the order dated 19.12.2013 made in I.A.No.2157 of 2012 in O.P.No.128 of 2010 and the earlier CRP itself which is said to have been filed against the same order, is numbered as CRP.No.949 of 2016, only after 3 years of the said order. Even the said CRP was dismissed for default on 27.04.2001, only in the restoration application, this Court observes that instead of filing a CMA, CRP has been wrongly filed. Therefore, a restoration petition in C.M.P.No.21480 of 2021 was filed and the order was passed on 15.03.2022. Even thereafter, the present CMA was presented on 02.09.2022



C.M.P.No.6079 of 2023

and the defects were cured and the matter was numbered on 14.03.2023. In that view of the matter, considering the overall circumstances of the case, it cannot be said that the delay is only due to the petitioner diligently pursuing another erroneous relief. There has been delay at every stage on the part of the petitioner herein. Even the erroneous relief prayed by him namely CRP was not prosecuted by him and the same was dismissed for default and thereafter, the restoration application was filed by him again with the condone delay application. Therefore, we have taken into consideration the overall circumstances of the case and the plea of the learned counsel for the petitioner for one more opportunity to be given to the petitioner.

7. Considering the plight of the wife and child and considering the delay in matter, we are inclined to condone the delay of 3087 days, however only on condition to deposit a sum of Rs,20,00,000/- to the credit of O.P.No.128 of 2010 on the file of the Principal Judge, Family Court, Chennai within a period of two(2) weeks from the date of receipt of a copy of this order. It is made clear that there will be no further extension of time. Upon failure to deposit, the application shall stand automatically dismissed without any further reference to the Court.

(J.N.B.J.) (D.B.C.J.)

23.06.2023

msv



WEB COPY



C.M.P.No.6079 of 2023

J.NISHA BANU, J.,
and
D.BHARATHA CHAKRAVARTHY, J.,

msv

C.M.P.No.6079 of 2023
in C.M.A.Sr.No.96987 of 2022

23.06.2023