



*C.M.P.No12101 of 2024*

**C.M.P.No12101 of 2024**  
**in C.R.P.No.2816 of 2022**

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**BATTU DEVANAND, J**

This Petition has been filed seeking to condone the delay of 49 days in filing the Restoration Petition which is filed to set aside the order dated 30.01.2024 passed in this CRP.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The learned counsel for the petitioner submits that the petitioner is a senior citizen with serious health ailments and he was under the reasonable belief that his Advocate was diligently conducting the CRP, inter-alia by attending each hearing. When he enquired, the CRP was dismissed for default. The learned counsel further submits that the petitioner shall not be penalised for the error of his counsel for not participating in the case proceedings and requested to allow this Petition.

4. On the other hand, the learned counsel appearing for the respondent vehemently opposed this Petition stating that no reasons are assigned in the affidavit filed by the petitioner to show sufficient cause to



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condone the delay of 49 days. The learned counsel further contends that there are no bonafide on the part of the petitioner to file set aside application with a delay of 49 days and requested to dismiss the petition.

5. Having heard the learned counsel on either side and on careful perusal of the averments made in the affidavit and the counter affidavit filed by both the parties, this Court finds sufficient force in the contention of the learned counsel for the petitioner that for the mistake of the counsel, parties could not be penalised.

6. Admittedly, in the present case, the petition engaged an Advocate who has to take care of the proceedings of the case. But, the case was dismissed for default by order dated 30.01.2024 for his absence. This Court can't lost its sight towards the factual situation in the Court proceedings. In some cases, Advocates may not appear when the case is called. If it is intentional, it cannot be considered. But if the Advocate is on legs before any other Court or he could not reach the Court at the time of calling the case or for other personal inconvenience, it has to be considered in a positive way.



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7. In this case, there is a delay of 49 days in filing the petition to restore the CRP by setting aside the default order. Though the learned counsel for the respondent expressed his serious objection for condoning the delay, considering the facts of the case, this Court intends to condone the delay of 49 days in the interest of justice subject to certain condition.

8. Accordingly, this Petition is allowed and the delay of 49 days in filing the Restoration Petition is condoned on the payment of cost of Rs.5,000/- to be payable to the learned counsel for the respondent within two (2) days from today.

9. Registry is directed to post the CRP immediately, whenever the after filing the Memo of Cost.

**22.07.2024**

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