



C.M.P.No.27645 of 2023

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in

C.R.P.No.1084 of 2020

BATTU DEVANAND, J.

This Petition has been filed to condone the delay of 115 days in filing an application to set aside the order passed by this Court in C.R.P.No.1084 of 2020 dated 28.06.2023 and for consequential orders.

2. Heard the learned counsel for the petitioner and the learned counsel for the first respondent and perused the material available on record.

3. The C.R.P.No.1084 of 2020 was filed against the order dated 15.07.2019 in I.A.No.14070 of 2019 in O.S.No.4109 of 2016 on the file of the VI Additional City Civil Court, Chennai. On 28.06.2023, when the C.R.P. was listed for hearing, as there was no appearance on behalf of the petitioner, the same was dismissed for non-prosecution by its order dated 28.06.2023. Against the same, the petitioner filed a petition to set aside the default order and to restore the C.R.P. with a delay of 115 days and a separate petition is filed seeking to condone the delay of 115 days in filing the Restoration Petition.



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4. The learned counsel for the petitioner submits that on 28.06.2023, when the C.R.P. was listed, due to the mistake of the clerk attached to the erstwhile counsel on record, due to inadvertence and oversight had failed to note down the case in the daily list of cases for the Office which had consequently resulted in the non-appearance of the counsel when the case was called up for hearing. The learned counsel further submits that the non-appearance of the counsel is neither wilful nor wanton. It is also contended by the learned counsel for the petitioner that miniscule irregularities must not prevent the ends of substantial justice being met.

5. On the other hand, the learned counsel appearing for the first respondent vehemently opposed the petition filed to condone the delay of 115 days in filing the Restoration Petition. He further submits that consequent to the dismissal of the C.R.P. for non-prosecution, the petitioner herein was served with insolvency notice and despite of being in receipt of the Insolvency Notice, since the petitioner herein did not respond to the same, the IP No.46 of 2023 was preferred against the petitioner. Since, the petitioner did not appear before the Court in the I.P. Proceedings, the High Court of Madras had declared/ adjudged the petitioner as an Insolvent.



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WEB COPY 6. The learned counsel submits that since the petitioner has been declared/ adjudged as an Insolvent by the High Court of Madras, it is necessary that the Official Assignee of the High Court of Madras, who is in charge of the estate of the petitioner is a must and necessary party to the proceedings. The learned counsel further submits that the petitioner has come to this Court with unclean hands with the sole object of delaying the proceedings, the application for condonation of delay in filing the application to set aside the order and to recall the order dated 28.06.2023 has to be dismissed.

7. Having heard the submissions of the respective counsels and on perusal of the materials available on record, this Court is of the considered opinion that the petitioner failed to show any sufficient cause to condone the delay of 115 days in filing the Restoration Petition and to set aside the order passed by this Court on 28.06.2023.

8. Accordingly, this Civil Miscellaneous Petition is dismissed.

06.06.2024



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BATTU DEVANAND, J.

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