



C.M.P.No.28167 of 2023
in C.M.A (SR) No.155112 of 2023

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(Filing Number)

M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

(Order of the Court was made by K.GOVINDARAJAN THILAKAVADI,J.,)

The above Civil Miscellaneous Petition is filed to condone the delay of 42 days in filing the above Civil Miscellaneous Appeal against the order dated 29.05.2023 passed in O.P.No.2693 of 2019 by the Family Court, Chennai.

2. This petition is filed by the petitioner/wife.

3. According to the petitioner, said O.P.No.2693 of 2019 was filed by the petitioner / wife for restitution of conjugal rights. The learned Principal Judge, Family Court, Chennai vide order dated 29.09.2023 dismissed the said OP, against which the petitioner wife has preferred the present appeal with a delay of 42 days.

4. In the support affidavit it has been stated that since the petitioner underwent a surgery, she was unable to contact her counsel to prefer the appeal and hence the above delay has occurred. The reason as



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stated in paragraph 5 of the support affidavit reads as follows:

“5. I respectfully submit that I was terribly shocked to know that my restitution petition was dismissed. Further, my son who is under Nephrology treatment became sick. I have to take care of him and I could not able to concentrate to file this appeal. I further submit that the respondent didn't take care of my son and myself. Hence, I am living under the mercy of my parents and it is battle for me to arrange money for out livelihood and medical expenses. Further, I have not filed any petition for maintenance but I am attending the case filed by my husband, which is pending before the Sub-Court, Poonamalle to defend and explain my situation to the court. Even though the divorce petition filed by my husband I tried to talk and convince in each hearing. I have undergone for a surgery for HYSTERECTOMY under these circumstances, I am unable to contact my counsel to prepare this appeal and hence the delay in filing the above appeal occurred.”

5. The learned counsel appearing for the petitioner would submit that the said delay is neither willful nor wanton but for the aforesaid reasons.



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6. On the other hand, learned counsel appearing for the respondent / husband would resist the petition by stating that the petitioner ought to have been more diligent in preferring the appeal in time and the reasons stated in the affidavit is not sufficient to condone the delay.

7. We have carefully considered the submissions made on both sides.

8. From the submission made and the averments in the support affidavit, it is seen that only due to the illness suffered by the petitioner, she was unable to prefer the appeal in time. Since the subject matter pertains to dispute between husband and wife, we intend to give a liberal approach.

9. Hence, considering the facts and circumstances of the case, the trajectory the matter has taken and also the fact that the delay is only 42 days, we feel that this is a fit case to accede to the prayer in the present petition as there is no deliberate or gross negligence on the part of the petitioner in preferring the appeal.

10. Therefore, we feel that in order to render substantial justice, the said delay can be condoned.

11. Accordingly, this petition is allowed and the delay of 42 days in preferring the appeal is condoned. No costs.



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Registry is directed to number the appeal, if it is otherwise in
order.

[M.S.,J.] [K.G.T.,J.]

15.02.2024

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