



W.M.P. No.40341 of 2024 in W.P. No.34139 of 2019

M.SUNDAR, J.

and

HEMANT CHANDANGOUDAR, J.

(Order of the Court was made by M.SUNDAR, J.)

Captioned 'writ miscellaneous petition' [hereinafter 'WMP' for the sake of brevity] has been filed with Condonation of Delay (CoD) prayer *qua* 179 days delay in filing a petition to restore the captioned main 'writ petition' [hereinafter 'WP' for the sake of brevity] which was dismissed for default/nonprosecution on 29.04.2024.

2. Mr. N. Elumalai, learned counsel on record for WMP petitioner is before us and learned counsel draws our attention to paragraph 4 of support affidavit, the scanned reproduction of which is as follows:

4) I submit that as a counsel for the petitioner, I was very diligently following up the case right from the date of filing and I never sought for any adjournment nor was there any occasion to set the petitioner ex parte on any account. However, unfortunately, in the month of March 2024, my mother who came to visit me in Chennai suddenly became ill due to jaundice and became bedridden. She was taking country medicine under my care. I had to attend to her and be beside her to take care of her. I could hardly move out. After giving constant attention and best treatment, my mother recovered from the illness in the month of May 2024. During her illness I was under great amount of mental and physical tension to take care of my mother. In this trying period, I had not also seen any message about the writ petition having been posted on 26.04.2024 and 29.04.2024. During the period of the illness of my mother, I had entrusted the case bundles to my colleagues to take care of any case that may up come for hearing. However, due to inadvertence, they also failed to note about the hearings of the aforesaid writ petition. After my mother recovered from the illness and I resumed my routine professional commitments in the month of June 2024. About a fortnight ago, the petitioner contacted me over phone to know about the status of the case. Immediately, I verified the status of the case with the Registry and came to know that the writ petition was dismissed on 29.04.2024. My non-appearance for the petitioner was neither willful nor wanton but only due to the above genuine reason. I am filing the present petition seeking to restore the writ petition which was dismissed for default on 29.04.2024. However, there has occurred a delay of 179 days which is neither willful nor wanton but only due to the above circumstances. If the delay is not condoned, the petitioner will lose a meritorious case and consequently will be put to serious hardship and irreparable loss. On the other hand, no prejudice will be caused to the respondents or anyone else.



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3. Mr. S. Wilson, learned counsel for R1 (SHRC), Mr.T.K.Saravanan, learned Additional Government Pleader for R2, Mr.S.Santhosh, learned Government Advocate (Criminal Side) for R3 and Mr.G.Balamanikandan, learned counsel for R4 do not oppose the CoD prayer.

4. R5 (Mr.D.Sivashanmugam) is a learned Member of the Bar and is appearing party-in-person. R5 submitted that a counter affidavit dated 07.03.2025 (counter affidavit does not have jurat) has been filed, however, R5 very fairly submitted that the CoD prayer can be considered at the discretion of the Court and only made a faint reference to the counter affidavit.

5. Considering the facts and circumstances of the case, nature of the matter and the reason for CoD, more particularly, paragraph 4 of the support affidavit reproduced and extracted *supra*, this Court is convinced that the CoD prayer deserves to be accepted. In this regard, this Court deems it appropriate to record that the writ petitioner is ready to argue the captioned WP today but R5 requests for an accommodation citing difficulty at his end. We have taken this also into account as a parameter for acceding to the CoD prayer.



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6. In the light of the narrative thus far, delay of 179 days in filing the restoration petition is condoned and captioned W.M.P. is allowed/ordered as prayed for. There shall be no order as to costs.

**(M.S., J.) (H.C., J.)
17.06.2025**

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