

IN THE COURT OF THE SUBORDINATE JUDGE, MELUR.

Present: Tmt. M. SAMUNDEESWARI PRABHA, M.A., M.L.,

Tuesday, the 1st day of April 2025

I.A.No.4/2024

in

I.A.No.1/2022

in

O.S.No.145/2021

Kartheeswari

..... Petitioner / Petitioner/Impleading
Petitioner

// Vs //

1. Muthuraja

..... Respondent/Respondent/Plaintiff

2. Nagendran

3. Sivaperumal

4. Subbaiah

5. Tahsildar, Melur

6. District Collector, Madurai

..... Respondent/Respondent/Defendants

This petition coming up on 25.02.2025 for final hearing before me in the presence of Advocate.Thiru.M.Paramasivam, Advocate for the petitioner and Advocate.Thiru.SP.Kannan, Advocate for the 1st respondent and Advocate.Thiru.K.Sethupathi, Advocate for the 2nd and 3rd respondents and Advocate.Thiru.B.Murugan, Advocate for the 4th respondent and Advocate.Thiru.K.Sabhapathy, Government Pleader Advocate for the 5th and 6th respondents and upon hearing enquiry on both side and having stood over for consideration till this day, this court delivered the following:-

ORDER.

This petition has been filed Under Section 5 of Limitation Act pass an order to condone the delay of 54 days in filing the restoration petition.

1. Brief averments of the petition :-

(I) The petitioner herein and also petitioner in impleading petitioner / proposed defendant in the main suit. The respondent/plaintiff filed the suit for declaration to declare the plaintiff is a legal heir of deceased Chinnaperumal. The said deceased Chinnaperumal is her paternal uncle (Periyappa) and he was adopted the petitioner as her daughter for which her was executed a will infavour of the petitioner and declared the petitioner as a legal heir of him. By suppressing the above facts, the plaintiff filed the present suit to declare them as legal heirs of her adopted father, without added the petitioner as a party defendant. Hence the petitioner filed impleading

petition to implead her as one of the defendant in the Suit in O.S No.145 of 2021 and same was numbered in I.A.No.1/2022.

(ii) But for the last few years the petitioner taking treatment for hyper blood sugar and blood pressure & other ailments. For which, the petitioner have to go to the hospital weekly thrice and also the petitioner was advised not to travel to long distance by her doctor. Because of her medical and personal issues, the petitioner could not communicate her counsel properly and enquire about her case status. But the petitioner was on the fond hope that, her counsel will take care of her case. Per contra, due to the communication gap, her counsel her failed to represent her case on behalf of the petitioner.

(iii) The petitioner counsel has not appeared for argument. Finally on 03.01.2024 her impleading petition I.A.No. 1/2022 was dismissed for default, because of non appearance of her counsel. The petitioner prays to pass an order to to condone the delay of 54 days in filing the restoration petition. Hence this petition has to be allowed.

2. Brief averments of the counter affidavit filed by the 4th Respondent/ 3rd Defendant :-

(I) The 4th respondent herein and 3rd defendant in the original suit. The petition is not maintainable either on law or on facts. Save and except those that are hereinafter admitted expressly and all other allegations made in the affidavit are all false and are hereby denied. The petitioner has filed an application to implead herself as a party to the suit as I.A.No:1/2022 wherein the 4th respondent have filed his counter affidavit and the same maybe treated as part and parcel of this affidavit.

The application I.A.No:1/2022 when the petitioner has failed to proceed the application filed by her for the reasons best known to her and leave the petition as dismissed for default for non-prosecution as early as on 03.01.2024 and after the dismissal of I.A, PW1 was cross examined by his side on 18.03.2024. The PW1 was filed his chief examination on 11.10.2022 and when the case is posted for marking of documents the petitioner has filed I.A.No:1/2022 and the same was disposed on 03.01.2024.

(ii) The Petitioner/Petitioner/proposed Defendant is the tool at the hands of the plaintiff. With an intention to extract money in the name of suit the from 4th respondent, the Plaintiffs as well as the Petitioner have prolonged the suit without any progress with an intention to delay in disposal of suit. The application for restoration of I.A was filed on 16.04.2024 after lapse of 4 months without assigning any valid or acceptable reason whatsoever, simply by stating she as well as her previous have failed to follow the case and filed this application. Further the petitioner has not produced any document to show about her alleged ailment, disease, nature and length of treatment. Hence this petition has to be dismissed with costs.

3. The point for consideration aroused is that:-

Whether the petition has to be allowed or not?

4. Point.

Both sides heard. Records perused. This petition has been filed to condone the delay of 54 days in filing the restoration application.

In order to give an opportunity, this court inclines to pass an order in favour of the petitioner to conduct the case on merits provided the petitioner has to pay the cost a sum of Rs.1000/- to the respondent on or before 15.4.2025. Failing which this petition stands dismissed.

5. Result:-

In the result, this petition is allowed subject to the payment of cost of Rs.1000/- to the respondent on or before 15.04.2025. Call on 15.04.2025.

Dictated to the Steno - Typist, and typed by her in office computer, corrected and pronounced by me, this the 1st day of April 2025.

**Sub Judge,
Melur.**

BOTH SIDES OF THE DOCUMENTS AND WITNESS:- NIL

**Sub Judge,
Melur.**

**Fair/Draft Order
in
I.A.No.4/2024
in
I.A.No.1/2022
in
O.S.No.145/2021
Dt : 01.04.2025
Sub court, Melur.**