

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE AT TIRUVALLUR

Present: **Dr J. JULIET PUSHPA, Ph.D. (Law)**

Principal District Judge, Tiruvallur

Friday, the 23rd day of January 2026

I.A.3/2025 in GWOP.376/2021

G.A. Sivabalan,

....Petitioner

/Vs/

S.M. Gnanapriya,

...Respondent

This petition was coming on 21.01.2026 before me for final hearing in the presence of M/s S.P. Venugopal, V. Thiyagu Learned Counsels for the Petitioner and M/s A.P. Mahendra Varma, M. Thamilselvan N.G. Thamilselvan, learned counsel for the respondent, upon hearing both side, perusing the materials on records and having stood over for consideration till this date, this Court delivered the following:-

ORDER

This Petition is filed by the Petitioner Under Order IX Rule 9 of CPC to restore the main Original Petition No.376/2021, which was dismissed for default on 27.06.2023.

2. The averments in the petition in brief :

According to the petitioner, he has filed the main Original petition seeking custody of his minor daughter Swetha @ Vasumathi (born on 24.02.2021). When the original petition was posted for trial on 27.06.2023, he was held up in Bangalore for his official duties, and informed his counsel to file proof affidavit

along with documents . However his counsel on record appeared on 27.06.2023 before this Court, there was no sitting on that day and entire matter would be taken by the In-charge Court for which his impression would be adjourned next hearing date. Only after verifying 'A' Diary, he came to know that the case was dismissed for default for non-appearance for which he advised his counsel to file the petition for restoration of GWOP. His non-appearance is neither willful nor wanton, but only due to the above said circumstances. Hence, prayed to restore the Original petition to file which was dismissed for default on 27.06.2023 for disposal on merits.

3. Brief averments in the counter filed by the respondent, in brief :

The respondent contended that the reason adduced by petitioner is incorrect and misleading. In his divorce petition in HMOP.76/2023 during his cross examination before Family Court, Tiruvallur , he had deposed that he was without job from 13.05.2023 and staying in Chennai. Hence, the reasons stated by the petitioner is nothing but a total lie who was attending this Court from Tiruttani. Hence, this petition deserves to be dismissed. Further, he had falsely deposed in HMOP.76/2023 on 10.08.2023 that he already filed petition to restore the case, hence, it is entirely a false statement. Further, the state of official duty at Bangalore is utter false as he had admitted in the divorce proceedings between the same parties that he was jobless and permanently residing at Chennai with his father. Hence, the present claim that in June 2023 is a deliberate falsehood. Further, on 27.06.2023, there was no incharge court functioning, but the regular Presiding judge alone was conducting the proceedings and dismissed the case for

default due to continued non-appearance. By swearing to a false excuse of no sitting / in-charge Court, the petitioner has deliberately fabricated a false reason to mislead the Court. The petitioner has indulged in deliberate perjury which must not be condoned by the Court. The contrary statements made by the petitioner in two judicial proceedings amount to perjury under sections 191-193 of the Indian Penal Code and this Court has power u/s 340 of Cr.P.C. and section 195 of Cr.P.C. to take cognizance of the perjury committed by the petitioner. The petitioner has not shown any bonafide or sufficient reason for his continued absence. Restoration under Order IX Rule 9 CPC can only be granted when genuine and unavoidable circumstances are proved. Since the conduct of the petitioner shows deliberate negligence, lack bonafide and falsehood, this petition has to be dismissed. The restoration petition is only to harass the respondent the minor child and to re-agitate the matter that has already been rightly dismissed. The restoration is not automatic which require sufficient cause. Mere vague excuses or false statements cannot constitute sufficient cause. The repeated indulgence to a negligent and dishonest litigant would cause grave prejudice to the respondent, who has already subjected to prolonged litigation. Hence, prayed to dismiss the petition and to initiate appropriate proceedings u/s 340 of Cr.P.C. for the offences u/s 191, 193, 199, 200 and 209 of IPC.

4. No oral or documentary evidence adduced by both side.

5. Now, the points for consideration is

1) Whether the petitioner is entitled for the relief as prayed for?

2) Whether this petition is to be allowed or not ?

6. **POINTS:**

Heard both side. Records perused.

This petition is filed by the petitioner under Order IX Rule 9 of C.P.C. to restore the main Original Petition, which was dismissed for default on 27.06.2023.

7. On perusal of records, the Original petition was filed by the petitioner herein under Section 7 of Guardians and Wardships Act seeking permanent custody of his minor daughter Swetha @ Vasumathi from the custody of the respondent herein. In the original petition, both entered appearance and on 27.06.2023, when the case was posted for enquiry, petitioner was not present and as there was no representation, and since he did not turn up, the original petition was dismissed for default.

8. The case of the petitioner in this petition is that on 27.06.2023, since he was held up in Bangalore due to his work schedule, he could not be present and since there was no sitting on the day, his counsel misunderstood that the case would be adjourned, hence he could not file proof affidavit and further on 27.06.2023, there was no sitting of the Regular presiding Officer, hence, he subsequently, verified A Diary and came to know about the dismissal order.

9. per contra, the respondent objected this petition stating that the reason for the delay is not true as the respondent admitted in the divorce petition before the Family Court, Tiruvallur in HMOP.76/2023 that he was jobless since 13.05.2023 and further falsely deposed on 10.08.2023, he already filed petition to restore the original petition and also committed perjury stating that on 27.06.2023, there was no regular court, which is punishable u/s 340 of Cr.P.C. There is no

bonafide reasons for the non appearance, hence prayed to dismiss the petition.

10. On perusal of records, it is seen that on 27.06.2023, when the case was posted for enquiry, the petitioner was absent, as there was no representation, the original petition was dismissed for default. The petitioner states that he was held up in Bangalore and could not appear, while the respondent contend that in the divorce petition in HMOP.76/2023 , he admitted that he was jobless from 13.05.2023. On considering the contention of the respondent, it is seen that the petitioner was absent on 27.06.2023 for the reason that he was held up in Bangalore for his job, while he admitted in his evidence before the Family Court that he was jobless as on 13.05.2023, which is one month prior. Therefore, there is nothing contra in the case of the petitioner for the delay happened as he was allegedly in Bangalore as on 27.06.2023.

11. As far as the statement of petitioner that there was no regular sitting on 27.06.2023 is concerned, admittedly, it is contra to the proceedings of this Case. On 27.06.2023, it is observed by the regular Presiding Officer that petitioner was absent, there is no representation for petitioner. Already sufficient opportunities were given, even then he has not turned up, hence, petition is dismissed for default. In this regard the learned counsel for the respondent argued that the petitioner has committed perjury by giving false statement that there was no regular sitting in the Court on 27.06.2023, hence, proceedings has to be initiated u/s 340 of Cr.P.C. as against him. Further, he relied on the authority of the Hon'ble Supreme Court reported in 2013(6) SCR 496 (*Moti Lal Songara Vs.*

Prem prakash @ Pappu and another) and 1995 SCC (1) 4221 JT 1994 (*Chandra Shashi Vs. Anil Kumar Verma*) wherein it is held that the suppression of the fact by the accused is a fraud on the Court, hence, such fraudulent act has to be punished.

12. As far as this contention is concerned, this petition is filed under Order IX Rule 9 of CPC , wherein this Court has already condoned the delay in filing this petition. As far as the absence of the petitioner is concerned, he was absent only one hearing before 27.06.2023, i.e. on 08.06.2023 before the original petition was dismissed for default. As far as the nature of the Original petition is concerned, it is the father seeking custody of his child. Hence, it is necessary to see that every opportunity has to be given to the petitioner so as to get orders on merits , rather than rendering the same dismissed for default.

13. While the petitioner contends that his counsel wrongly noted the proceedings in this case and he was outstation, this Court considers that certain leniency is required even though it was wrongly stated that on the date of the order, i.e. 27.06.2023 that there was no regular sitting. It is settled law that Oder IX Rule 9 of CPC enables the Court to render an opportunity to the parties who diligently pursuing their litigation to revive the same when it was dismissed for default. Admittedly, in this case, the original petition was dismissed for default on 27.06.2023. This petition is filed with a delay of 32 days which was already condoned by this Court on 07.01.2025. Mere wrong statement about the hearing of the case as to there was only in-charge sitting on the day will not lay the

ingredients to initiate the proceedings for perjury and also set aside the reason stated by the petitioner for his non-appearance. The non-appearance of the petitioner is admitted by the petitioner. On perusal of the adjudication it shows that the petitioner was absent only for one hearing on 08.06.2023, which is the previous hearing on 27.06.2023. The petitioner states that he was held up at Bangalore. Thus, it cannot be held that the petitioner was not diligent in following the matter.

14. Admittedly, the respondent herein preferred the revision petition as against the orders of this Court in Transfer CMP 1535/2024 on the file of this Court dt. 30.07.2024, transferring the DVC No.9/2023 on the file of Judicial Magistrate, Tiruttani to the file of Additional Mahila Court, Tiruvallur which is pending in CRP No. 4015/2024 before the Hon'ble High court, Madras and the said has been stayed till date. There is no orders staying the proceedings to this Original petition. Therefore, there is no impediment in considering this petition on merits.

15. The reason stated by the petitioner for non-appearance is that since he was held up in Bangalore in the month of June 2023, he could not pursue the matter with his counsel and came to know about the dismissal order belatedly appears to be reasonable and acceptable. Already the delay of 32 days in filing this petition was allowed by this Court on 07.01.2025. No prejudice would be caused to the respondent by allowing this petition, since the respondent will have ample opportunity to put forth her defence in the original petition as the matter

will be decided on merits.

16. Therefore, on considering the plea of the petitioner, in order to give an opportunity to the petitioner to prove his case, to avoid multiplicity of proceedings, as both parties will be benefited as the matter will be decided on merits, and also considering the nature of the relief which is related to the custody of their child, in the interest of justice, and considering other facts and circumstances, this Court is inclined to allow this petition.

In the result, this petition is allowed. No costs.

Dictated to Steno-typist, transcribed and typed by him, corrected and pronounced by me in Open Court on this, 23rd day of January, 2026.

**PRINCIPAL DISTRICT JUDGE,
TIRUVALLUR**

Witness & Documents on both side : NIL

**PRINCIPAL DISTRICT JUDGE,
TIRUVALLUR**