

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2018

CORAM

THE HON'BLE Mr. JUSTICE N.ANAND VENKATESH

Crl.R.C.No.333 of 2011

Rajendran

..Petitioner

-vs-

Meenakshi

..Respondent

Prayer: Criminal Revision Petition under Section 397 r/w 401 Cr.P.C., to set aside the order dated 22.09.2010 passed in unnumbered C.A.No. Of 2010 on the file of the Principal Sessions Judge, Villupuram Divn. Villupuram against order dated 06.04.2010 passed in C.C.No.1 of 2009 on the file of the Judicial Magistrate No.II, Villupuram.

For Petitioner : Mr.J.R.K.Bhavanantham
Mr.K.Boopalan

O R D E R

This Criminal Revision Petition has been filed aggrieved by the order passed by the Principal Sessions Judge, Villupuram, rejecting to take the Criminal Appeal on file, on the ground that the Appeal is barred by limitation.

2. The respondent filed an application under the Domestic Violence Act, before the Judicial Magistrate No.II, Villupuram, seeking for various reliefs including maintenance and medical expenses. The learned Magistrate, after considering the materials placed before the Court, by an order dated 06.04.2010 directed the petitioner herein to pay a sum of Rs.1,500/- per month towards maintenance and also to pay a sum of Rs.10,000/- every year towards medical and other expenses to the respondent.

3. The petitioner herein, aggrieved with the said order, filed an appeal before the Principal Sessions Court, Villupuram, under Section 29 of the Protection of Women from Domestic Violence Act, 2005.

4. The Lower Appellate Court by an order dated 22.09.2010 dismissed the appeal even without numbering it, on the ground that the appeal was not filed within a period of 30 days from the date of order of the Trial Court. Aggrieved by the same, the husband has filed the present Revision before this Court.

5. This Revision is of the year 2011 and inspite of several attempts, notice is yet to be served on the respondent. At this length of time, this Court felt that since the appeal was not dismissed by the Lower Appellate Court on merits and it was only dismissed on technical ground that it was not filed within the limitation period provided under Section 29 of the Act, if ultimately, this Court finds that the delay in filing the appeal can be condoned and there is no bar to condone the delay in filing the appeal, the appeal can go before the Lower Appellate Court, which will decide the appeal on merits, after affording opportunity to both the parties. By adopting this procedure, the respondent/wife will not be put to any prejudice and this Court will ensure that her right is safeguarded.

6. The learned counsel for the petitioner would submit that eventhough Section 29 of the Protection of Women from Domestic Violence Act prescribed a period of 30 days for filing an appeal, there is no provision under the Act, which bars the Court from taking the appeal on file after this period by condoning the delay in filing the appeal. The learned counsel for the petitioner also brought to the notice of this Court, the judgment of the Karnataka High Court on the same issue in K.M.Revanasiddeshwara Vs. Smt.K.M.Shylaja, reported in 2013(2) Crimes 59.

7. Section 29 of the Protection of Women from Domestic Violence Act, reads as follows:-

"29. Appeal:- There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later."

8. Section 29 of the Limitation Act, reads as follows:-

"29. Savings:- (1) Nothing in this Act shall affect Section 25 of the Indian Contract Act, 1872.

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the

period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of "easement" in Section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882, may for the time being extend."

9. When an enactment provides for the period of limitation for the parties for filing an appeal and also provides for the period up to which the Appellate Court can condone the delay in filing the appeal, the Courts do not have the Power to apply the provisions of Section 5 of the Limitation Act, since the enactment itself provides for the period within which the appeal has to be filed and also the period up to which the Court can condone the delay. This restriction in applying Section 5 of the Limitation Act to condone the delay can be found in enactments like the Tamil Nadu Buildings (Lease and Rent Control) Act, Arbitration Act etc.,

10. In the present case, Section 29 of the Protection of Women from Domestic Violence Act, merely provides for the period within which an appeal should be filed and does not prescribe any period that is condonable if the appeal is not filed on time. Under the said circumstances, Section 29 of the Limitation Act, will come in play. Sub Section (2) of Section 29 of the Limitation Act provides for the application of the Limitation Act, to a special or local law, insofar as and to the extent to which, they are not expressly excluded by such special or local law.

11. In the instant case, the special law is the application of the Protection of Women from Domestic Violence Act, and there is no provision under this Act, which excludes the application of the provisions under Section 4 to 24 of the Limitation Act.

12. The Karnataka High Court, while considering the very same question has held as follows:-

"12. It is clear from sub-Section (2) of Section 29 of the above that the provisions contained in Section 4 to 24 of the Limitation Act shall apply insofar as to the extent to which they are not expressly excluded by such special or local law. Therefore, in the absence of any specific provision in the Domestic Violence Act, 2005, the application of sub-Section (2) of Section 29 therefore cannot be prevented. In other words, the provisions to Sections 4 to 24 will also apply, as the said provisions have not been expressly excluded by the Domestic Violence Act, 2005.

19. The lower appellate Court committed serious error in rejecting the application tiled under Section 5 of the Limitation Act for condonation of delay. It is a different matter, whether the petitioner has made out a case for condonation of delay or not, but i.e., not a ground to hold that the application tiled under Section 5 of the Limitation Act itself is not maintainable. Since, a reading of the provisions contained in the Domestic Violence Act does not bar the application of the Provisions of the Limitation Act in respect of the appeal, the view taken by the Court below cannot be sustained in law."

13. This Court is in complete agreement with the judgment cited (supra).

14. The Trial Court has directed the petitioner to pay a sum of Rs.1,500/- per month as maintenance from the date of the passing of the order and also directed the petitioner to pay a sum of Rs.10,000/- per year towards the medical and other expenses. The learned counsel for the petitioner is not in a position to inform this Court as to whether any maintenance is being paid by the petitioner to the respondent. This Court therefore directs the petitioner to pay to the respondent directly 50% of the arrears of maintenance calculated from 06.04.2010 till date and also 50% of the yearly expenses ordered by the Court from 2010 onwards. This payment shall be made within a period of six weeks from the date of receipt of copy of this order.

15. This Court deems it fit to condone the delay of 25 days in filing the appeal by the petitioner. The Principal Sessions Judge, Villupuram is directed to take the appeal on file and number and issue notice to the respondent. However, before

issuing notice, the Principal Sessions Judge, Villupuram, has to ensure that the petitioner has complied with the above directions given by this Court. If the petitioner does not comply with the above directions, the appeal shall not be entertained by the Sessions Court.

16. This Criminal Revision Petition is allowed, in terms of above directions.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

dna

To

1. The Principal Sessions Judge, Villupuram.

2. The Judicial Magistrate No.II, Villupuram.

+ 1 cc to Mr. J.R.K. Bhavanntham, Advocate Sr.41518

Cr1.R.C.No.333 of 2011

(CS-VII)
EU(09/07/2018)



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