

C.M.P.No.4826 of 2018 in C.M.S.A.No.SR766 of 2018

T.RAJA, J.

The petitioner/husband filed the divorce petition seeking a decree for dissolution of marriage solemnized between the petitioner and the respondent on 2.4.2007. The learned Subordinate Judge, Madurantakam, after hearing the parties, holding that there was no sufficient proof for accepting the plea of cruelty and desertion, dismissed the H.M.O.P.No.22 of 2010. Aggrieved thereby, the petitioner also filed an appeal before the learned Principal District Judge, Chengalpattu in C.M.A.No.7 of 2014 re-stating the grounds of divorce to be accepted, as the trial Court failed to appreciate the plea of cruelty and desertion. The learned Principal District Judge, Chengalpattu also, finding no merits whatsoever in the C.M.A.No.7 of 2014 and agreeing with the findings and conclusions reached by the learned Subordinate Judge, Madurantakam, dismissed the appeal on 7.3.2017. As against that, the C.M.S.A.No.SR766 of 2018 has been filed. In the meanwhile, there has been a delay of 180 days. Hence, the C.M.P.No.4826 of 2018 has been filed seeking to condone the said delay.

2. Learned counsel for the petitioner submitted that after the first appeal was dismissed on 7.3.2017, the lower Court counsel appeared to have applied for the certified copy of the judgment and decree only on 15.6.2017, which were made ready on 18.7.2017 and the same were furnished to the petitioner only on 20.11.2017. Thereafter, he has engaged the present counsel only on 20.12.2017 to prepare the above second appeal. Hence, the delay caused by the petitioner's counsel cannot be put against the petitioner, he pleaded.

3. The said submission cannot be accepted. The reason being that after the first appellate Court dismissed the appeal on 7.3.2017, it is stated that the

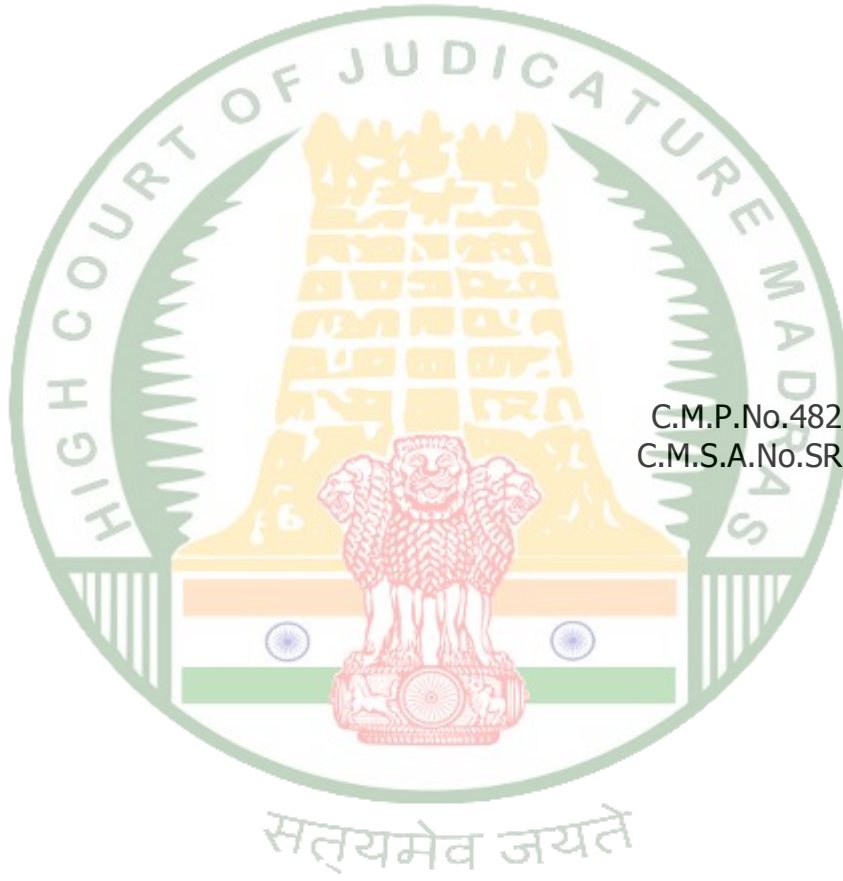
lower Court counsel had applied for the certified copy of the judgment and decree only on 15.6.2017 and the same were made ready on 18.7.2017. Thereafter, they were furnished to the petitioner only on 20.11.2017. The petitioner has engaged the present Advocate on 20.12.2017. When the plea of desertion and cruelty were disallowed by both the Courts below, the petitioner should have been more active in contacting the lower Court counsel, which he has not admittedly done. As the delay is huge and unexplained, this Court is unable to condone the huge delay of 180 days. Accordingly, C.M.P.No.4826 of 2018 stands dismissed.

20.06.2019

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