

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T.VINOD KUMAR**

I.A.No.1 of 2018

In/and

CMA.No.1102 of 2018

COMMON ORDER: *(Per the Hon'ble Sri Justice M.S.Ramachandra Rao)*

I.A.No.1 of 2018 is filed to condone the delay of 144 days in filing the appeal CMA.No.1102 of 2018.

2. In the affidavit filed in support of this application, it is stated by the petitioner that a judgment and decree has been passed by the Principal Senior Civil Judge at Warangal on 15.02.2018 in HMOP.No.166 of 2013 refusing relief of restitution of conjugal rights sought by the petitioner against the respondent; that certified copies of the said judgment were obtained in March, 2018; that she was advised to file an appeal in this Court and she came to Hyderabad to engage a counsel to file the appeal in March, 2018 itself, but she was advised to come after Summer Vacation, 2018; that she thereafter suffered from ill-health and so she could not approach the counsel within time to prefer the appeal.

3. Counter affidavit was filed by the respondent opposing this application. The respondent pointed out that the certified copy of the order passed in the OP was delivered to the petitioner on 09.03.2018 itself. It is stated that the place

where the petitioner is staying is a Town and a Mandal and is just 20 kms. away from Warangal and there are several transport facilities from the village, where she was staying, to travel to Warangal. It is stated that the petitioner waited deliberately from March, 2018 to October, 2018 to file this appeal and this negligence of the petitioner caused the delay, which cannot be condoned. It is also stated that the petitioner had filed a criminal complaint under Section 498A IPC against the respondent and the respondent was prosecuted in CC.No.130 of 1995 before the III Additional Judicial First Class Magistrate, Warangal and though initially he was convicted, Criminal Appeal No.198 of 1996 filed by the respondent was allowed on 06.02.2003. It is stated that the parties have been living separately since December, 1991, i.e., from the past 25 years and this factor may also be considered while deciding the appeal.

4. From the facts narrated above, it is clear that the judgment and decree was passed in HMOP on 15.02.2018, but the appeal was filed on 05.10.2018 before this Court with delay of 144 days.

5. It is not disputed by the counsel for the petitioner that the village where the petitioner is staying is well connected to Warangal Town from where petitioner could have come to

Hyderabad at any time to prefer the appeal before the expiry of period of limitation. Admittedly, petitioner did come to Hyderabad in March, 2018 but the appeal was not filed. The Summer Vacation of the High Court would have only started in May, 2018.

6. Therefore nothing prevented the petitioner from filing the appeal at that time by engaging a different counsel if the counsel, whom she had approached was not willing to file the appeal at that point of time.

7. There is also no material placed before this Court to say that the petitioner suffered ill-health thereafter.

8. That apart, the facts in the case indicate that the parties have been living apart since December, 1991. At this point of time, particularly, after prosecuting the respondent under Section 498A IPC and having failed, we do not see any chance of reconciliation between the parties.

9. In these circumstances, we do not find sufficient cause to condone the delay of 144 days in filing the appeal.

10. Therefore, I.A.No.1 of 2018 is dismissed. Consequently, CMA.No.1102 of 2018 is dismissed. No order as to costs.

11. Consequently, miscellaneous petitions pending if any shall stand cancelled.

M.S. RAMACHANDRA RAO, J

T.VINOD KUMAR, J

12th September, 2019.

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