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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.09.2020

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THE HONOURABLE MR. JUSTICE T.RAJA

C.M.P. No.1799 of 2020 in C.M.S.A. SR. No.9655 of 2020

Kandeewaran Poornamathi

.. Petitioner/Appellant

versus

Eswaran Vijayakumar

.. Respondent/Respondent

Prayer in C.M.P. No.1799 of 2020: Petition filed under Section 5 of the Limitation Act, 1963 to condone the delay of 418 days in filing the Civil Miscellaneous Second Appeal in C.M.S.A. SR. No.9655 of 2020.

Prayer in C.M.S.A. SR. No.9655 of 2020: Appeal filed under Order XLIII Rule 1 & 2 of C.P.C. read with Section 100 of C.P.C. to set aside the fair and final order dated 06.08.2018 passed in C.M.A. No.35 of 2017 on the file of the IV Additional District Judge, Coimbatore and reversing the fair and final order dated 31.08.2017 passed in H.M.O.P. No.227 of 2013 on the file of the Subordinate Court, Pollachi.

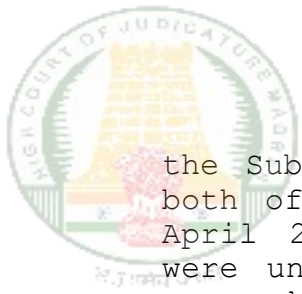
For petitioner : Mr.R.Ezhilarasan

For respondent : Mr.K.Doraisami,
Senior Counsel for
M/s.Muthumani Doraisami

ORDER

The petition has been filed to condone the delay of 418 days in filing the above un-numbered Civil Miscellaneous Second Appeal.

2.Learned counsel appearing for the petitioner wife would submit that the marriage between the petitioner and the respondent was solemnised on 11.12.2005 at Sri Appathalaswamy Temple, Koorapalayam, Nasiyanur, Erode as per Hindu rites and customs in the presence of the well wishers, belonging to both the families and the same was also registered in the office of



the Sub Registrar, Pollachi. After six days from the marriage, both of them went to United Kingdom. However, in the month of April 2013, due to some mis-understanding between them, they were unable to lead a happy matrimonial life. Thereafter, the respondent went to India in October 2013 and filed a petition in H.M.O.P. No.227 of 2013 for divorce on the file of the Sub Court, Pollachi with some false allegations. The petitioner, after receipt of the notice, contested the case by filing a counter affidavit. After full enquiry, the said H.M.O.P. No.227 of 2013 was dismissed vide order dated 31.08.2017 by the Sub Court, Pollachi. Aggrieved thereby, the respondent, challenging the same, has preferred an Appeal in C.M.A. No.35 of 2017 before the learned IV Additional District Judge, Coimbatore, who has granted divorce, finding various aspects that there was a cruelty levelled against the respondent on the basis of the admitted pleadings of the wife that he was taken into custody on the complaint given by the petitioner, reversing the order passed by the Trial Court and dissolving the marriage. Challenging the same, the petitioner has been advised to file this Civil Miscellaneous Second Appeal. In the meanwhile, there has been a delay of 418 days in filing the above appeal.

3.Learned counsel appearing for the petitioner would further submit that after the judgment passed by the IV Additional District Court, Coimbatore, since the petitioner was residing in United Kingdom along with her mother, who is a widow, she was unable to come to India at the relevant point of time. Moreover the certified copies of the judgment were mis-placed while in transit from United Kingdom to India. Therefore, she requested her counsel to get one more certified copy, after fulfilling the requirements. In this circumstance, the petitioner has been advised to file this petition to condone the delay of 418 days in filing the above C.M.S.A. Therefore, the delay has occurred only due to the reasons mentioned above that being bonafide one, the same could be condoned, failing which, the petitioner would be put to grave prejudice.

4.Learned counsel appearing for the petitioner further submitted that since the registry of the Appellate Court was not able to furnish the certified copy of the judgment and order dated 06.08.2018 passed in C.M.A. No.35 of 2017 by the IV Additional District Court, Coimbatore, in time, the delay of 418 days in filing the C.M.S.A. has occurred. In any event, although the case of the petitioner has been rightly accepted by the Trial Court, the same has been reversed by the learned IV Additional District Judge, Coimbatore and therefore, the matter should be allowed to be contested, on merits. Hence, the learned counsel for the petitioner prays for condoning the delay, which is neither willful nor wanton, but, for the reasons mentioned above.



5.A detailed counter affidavit has been filed by the respondent. Mr.K.Doraisami, learned Senior Counsel appearing for the respondent/ husband, opposing the prayer for condoning the huge delay of 418 days, submitted that the petitioner has not come to this Court within the reasonable time. The reason being that when the petitioner in her own counter affidavit filed before the Trial Court has stated that she caused cruelty on the respondent, she was not entitled to get any lenient approach from this Court to condone the delay. Secondly, when the IV Additional District Court, Coimbatore, accepting the case of divorce, granted the same in its judgment and decree dated 06.08.2018, the petitioner cannot say that the certified copies were misplaced and as a result she is entitled to come to this Court with a huge delay of 418 days.

6.Explaining further, learned senior counsel would submit that when the petitioner was physically present at her native place during February 2019 and she also met the respondent's parents on 04.02.2019 and the second copy application in C.A. No.336 of 2019 made on 15.03.2019 was allowed to be struck off, it is not open to the petitioner to take a stand in the delay petition that she was held up in United Kingdom with her widowed mother and as a result she was not able to pursue the matter. Adding further learned senior appearing for the respondent submitted that since the petitioner and the respondent were living separately from 07.4.2013 till now, finding that there is no mutual understanding between them, the Lower Appellate Court has rightly appreciated the case of both sides. Particularly, the way in which the petitioner conducted the case before the Trial Court, appearing during her chief examination and thereafter, not making herself ready for the cross examination, show her conduct that when the petitioner has not even co-operated before the Trial Court for completion of trial, therefore, no purpose would be served by condoning the delay because regularly and habitually she has not been showing any serious concern for conducting the case.

7.I find merits on the submission made by the learned senior counsel appearing for the respondent. When the matter was taken up for trial by the Trial Court, she appeared only for her chief examination. During the cross examination, as she has not co-operated before the Trial Court, she was not able to appear before the Trial Court. Secondly her yet another conduct shows that when the impugned judgment was pronounced on 06.08.2018, the petitioner pleaded that she was held up in United Kingdom along with her mother, but, in the counter affidavit filed by her, it has been stated that she was physically present at her native place during February 2019. Above all, since no sufficient explanation has been given for condoning the delay of



418 days in filing the un-numbered Civil Miscellaneous Second Appeal, this Court is not able to entertain the petition to condone the delay. Accordingly, this petition is dismissed. Consequently, C.M.S.A. SR. No.9655 of 2020 stands rejected.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vga
To

1.The IV Additional District Judge,
Coimbatore.

2.The Subordinate Court,
Pollachi.

3.The Sub Assistant Registrar,
Main AE Section, High Court, Chennai-104.

+1cc to Mr.R.Ezhilarasan, Advocate, sr no.30853

+1cc to M/s.Muthumani, Advocate, sr no.30745

C.M.P. No.1799 of 2020 in C.M.S.A. SR. No.9655 of 2020

PVS (CO)
RMP (02/12/2020)