

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.P.No.24206 of 2019 in C.M.S.A.No.SR139803 of 2019

K.Srividhya .. Petitioner/Appellant

-vs-

T.M.Kannan .. Respondent/Respondent

Civil Miscellaneous Petition filed under Section 5 of the Limitation Act to condone the delay of 440 days in filing the C.M.S.A.No.SR139803 of 2019, against the judgment and decree dated 11.4.2018 made in C.M.A.No.17 of 2013 on the file of the learned Principal District Court, Namakkal, confirming the judgment and decree dated 14.09.2013 made in H.M.O.P.No.56 of 2008 on the file of the learned Subordinate Judge, Tiruchengode.

For Petitioner :: Mr.N.Manokaran

For Respondent :: No appearance

ORDER

Heard learned counsel for the petitioner through video conferencing due to the Covid-19 pandemic.

2. This civil miscellaneous petition has been filed by the petitioner seeking to condone the delay of 440 days in filing the C.M.S.A.No.SR139803 of 2019. Mr.N.Manokaran, learned counsel appearing for the petitioner, arguing against the concurrent judgments and decrees suffered by the petitioner from both the first appellate Court in C.M.A.No.17 of 2013 dated 11.4.2018 and the trial Court in H.M.O.P.No.56 of 2008 dated 14.9.2013, stated that after the appeal was dismissed on 11.4.2018, copy application was made on 13.4.2018 and thereafter, stamps were called on 14.5.2018. After deposit of the stamps on 17.5.2018, the copy was made ready and delivered on 28.5.2018. Though the civil miscellaneous second appeal has to be filed before 15.8.2018, due to the financial hardship and family problem faced by the petitioner, there has been a delay of 440 days in filing the civil miscellaneous second appeal. He further stated

that the petitioner's mother also died on 29.9.2017 and her father is aged about 80 years, suffering from age related issues. In view of the compelling situation, the petitioner was prevented from pursuing this appeal. Therefore the delay, which is neither wilful nor wanton, may be condoned. Coming to the merits of the matter, he has indicated that there were two issues framed, namely, on the ground of mental cruelty alleged to have been caused by the petitioner against the respondent and another on the ground that the petitioner is suffering from incurable unsound mind. But the Courts below, answering the second issue in favour of the petitioner that she is not suffering from incurable unsound mind, accepted the case of the respondent on the first issue of mental cruelty caused by the petitioner in giving false complaints against the respondent and his aged parents. However, so far as the issue of mental cruelty is concerned, Mr.Manokaran argued that whether the mental cruelty has been committed by the petitioner has to be gone into by this Court and since both the Courts below have committed a concurrent error, the civil miscellaneous second appeal requires to be entertained by condoning the delay.

3. But this Court finds no sufficient cause to condone the huge delay of 440 days in filing the civil miscellaneous second appeal. First of all, there has been concurrent findings rendered by both the Courts below clearly holding against the petitioner that she is in the habit of giving false complaints against the respondent and his aged parents. At one point of time, on the complaint given by the petitioner against her husband, the respondent herein in Tiruchengode Town Police Station Crime No.949 of 2009 for the offence under Sections 294 (b) and 506(ii) of IPC, the respondent was arrested and remanded in judicial custody for a couple of days. Thereafter, a charge sheet was filed and the respondent and his family members faced criminal trial and at last they got acquitted, as per the judgment passed in C.C.No.360 of 2012 by the learned Judicial Magistrate, Tiruchengode. When the learned Judicial Magistrate, in the said judgment, has given a finding against the petitioner that she is in the habit of giving several false complaints against the respondent and his aged parents, that can also be seen from Ex.P12. One another complaint given by the petitioner against the respondent also has been referred to by the learned Judicial Magistrate, Tiruchengode that the petitioner has levelled several allegations against the respondent and his family members, which has been subsequently withdrawn by the petitioner's father. These facts clearly show that the petitioner has been in the habit of giving false complaints and at one point of time, the respondent was also arrested and remanded in judicial custody. Finally, he got acquitted

disproving the allegation made by the petitioner. Secondly, during this inordinate delay of 440 days, the respondent could have got married, as there was no stay of operation of the impugned judgments and decrees. Such a fact whether the respondent got married or not, has not been assertively placed before this Court. Therefore, finding no sufficient cause to condone the inordinate delay of 440 days, this Court is not inclined to entertain the civil miscellaneous petition. Accordingly, C.M.P.No.24206 of 2019 stands dismissed. Consequently, C.M.S.A.No.SR139803 of 2019 stands rejected.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

ss

To

1.The Principal District Court,
Namakkal

2.The Sub Court
Tiruchengode

C.M.P.No.24206 of 2019 in
C.M.S.A.No.SR139803 of 2019

rld(co)
aa09/11/2020

सत्यमेव जयते

WEB COPY