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C.M.P.No.19136 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2022

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN**

C.M.P.No.19136 of 2022

in

C.M.A.No.SR120067 of 2022

Prabavathi

.. Petitioner

Vs.

Ravichandran

.. Respondent

Prayer in C.M.P.No.19136 of 2022: This Civil Miscellaneous Petition is filed under Section 5 of the Limitation Act, praying to condone the delay of 965 days in filing the above appeal to set aside the order dated 09.12.2019 made in F.C.O.P.No.142 of 2012 on the file of Family Court, Salem.

Prayer in C.M.A.SR.No.120067 of 2022: This Civil Miscellaneous Appeal is filed under Section 19 of Family Courts Act, 1984 read with Section 28 of the Hindu Marriage Act praying to set aside the order dated 09.12.2019 made in F.C.O.P.No.142 of 2012 on the file of Family Court, Salem.

For Petitioner : Ms.S.Vasavi Sridevi

For Respondent : Mr.P.Tamilavel.

ORDER

[Order of the Court was made by SUNDER MOHAN, J.]

This Petition has been filed to condone the delay of 965 days in filing the above Appeal. The Respondent herein filed a Petition for divorce in



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E.C.O.P.No.142 of 2012 before the Family Court, Salem and the Learned Judge, Family Court, Salem has passed a decree of divorce on condition that the decree of divorce would come into force only after the payment of permanent alimony of Rs.5,00,000/- to the petitioner herein in addition to the maintenance amount already ordered. Further, the Respondent herein has filed an Appeal in C.M.A.No.1800 of 2021 challenging the order, directing the payment of permanent alimony to the petitioner in addition to the maintenance amount.

2.While so, the petitioner has filed the above Appeal challenging the decree of divorce passed by the Family Court, Salem. Though the order was passed on 09.12.2019, the petitioner had not preferred any Appeal within the statutory period. The Petitioner has stated that due to financial difficulties and because of COVID pandemic, she could not engage an Advocate to file an Appeal before this Court on time.

3.However, the reasons stated in the Affidavit are not satisfactory. It is a matter of common knowledge that COVID restrictions were announced during the last week of March 2020 and ended in the second Week of April 2020. Thereafter, there is no explanation in the affidavit filed in support of the Petition as to why the Appeal was filed only in the month of October 2022. It is settled law that the Petitioner has to explain the delay satisfactorily. The Petitioner had not done so.

4.Mean while, when the matter was taken up today, the Respondent herein sought permission to withdraw the Appeal filed by him in C.M.A.No.1800 of 2021. When we pointed out to the Learned Counsel for the Petitioner that in view of the withdrawal of Civil Miscellaneous Appeal, it is open for the Petitioner to initiate appropriate proceedings for enforcing the decree passed by the Family Court, Salem, the Learned Counsel for the Petitioner agreed for the same. Further, it is always open to the Petitioner to file a Petition for recovery of permanent



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alimony granted to the Petitioner.

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5.Since the Petitioner has not shown sufficient cause for the delay in filing the above Appeal, the Petition for condonation of delay of 965 days in filing the Appeal is dismissed. Consequently, the appeal is rejected at the SR stage itself.

(V.M.V.,J.) (S.M.,J.)

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**V.M.VELUMANI,J.
AND
SUNDER MOHAN,J.**

ay

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in
C.M.A.No.SR120067 of 2022**



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