



C.M.P.(MD)No.5305 of 2021 in C.M.S.A(MD)SR.No.7064 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.08.2022

Pronounced on : 02.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.P.(MD)No.5305 of 2021

in

C.M.S.A(MD)SR.No.7064 of 2021

S.P.Natarajan

... Petitioner /Appellant

Vs

R.M.Anandhi

...Respondent / Respondent

PRAYER in C.M.P.(MD)No.5305 of 2021:-

This Petition is filed under Section 5 of Limitation Act to condone the delay of 2026 days in filing the decree and judgment dated 23.03.2015 made in H.M.C.M.A.No.7 of 2010 on the file of the District Judge, Sivagangai, confirming the judgment and decree dated 14.07.2009 made in H.M.O.P.No. 86 of 2007 on the file of the Subordinate Judge, Devakottai.

PRAYER in C.M.S.A(MD)SR.No.7064 of 2021

This Civil Miscellaneous Second Appeal is filed under Section 28 of Hindu Marriage Act read with Section 100 of Civil Procedure Code Motor Vehicles Act 1988, to set aside the judgment and decree dated 23.03.2015 made in H.M.C.M.A.No.7 of 2010 on the file of the District Judge, Sivagangai confirming the judgment and decree dated 14.07.2009 made in H.M.O.P.No.86/2007 on the file of the Subordinate Judge, Devakottai.



C.M.P.(MD)No.5305 of 2021 in C.M.S.A(MD)SR.No.7064 of 2021

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For Petitioner : M/s.M.Rajeswari

For Respondent : Mr.K.Rajeshwaran

JUDGMENT

This petition is filed to condone the delay of 2026 days in filing the Civil Miscellaneous Second Appeal against the judgment of the learned District Judge, Sivagangai in H.M.C.M.A.No.7 of 2010.

2.Brief substance of the C.M.P.(MD)No.5305 of 2021, is as follows:

(i)The petitioner has filed this Civil Miscellaneous Petition under the Hindu Marriage Act. The petitioner is the appellant in H.M.C.M.A.No.7 of 2010. The petitioner filed a H.M.O.P petition for divorce and the case was dismissed on 23.03.2015. The marriage between the petitioner and the respondent took place on 12.07.1993 and they are having two sons by name Sathish Raja and Vignesh Raja. The petitioner worked as a driver in Tamil Nadu State Transport Corporation and he used to stay at home for only two or three days per week. Taking advantage of this position, the respondent misbehaved with other men and hence the petitioner filed a divorce petition in H.M.O.P.No.43 of 2004. The respondent sought for apology and the matter



C.M.P.(MD)No.5305 of 2021 in C.M.S.A(MD)SR.No.7064 of 2021

ended in compromise. Again, the petitioner and the respondent lived together for six months and the respondent was having illegal contact with one Annamalai and Samayadurai. The activities of the respondent was well known to the elder son Sathish Raja. The petitioner come out of the matrimonial home in the month of May, 2005.

(ii)The respondent filed a maintenance petition in M.C.No.6 of 2005 on the file of the learned Judicial Magistrate, Devakottai. Against the order in the maintenance case, the petitioner filed a revision petition before this Court in CrI.R.C.No.18 of 2007 and the same was dismissed. Thereafter, the petitioner filed a divorce petition in H.M.O.P.No.86 of 2007. In the trial, the petitioner failed to mark the evidence of the elder son in M.C.No.6 of 2005 and he failed to mark the First Information Report under SIT Act in Crime No.2 of 2006. In the absence of the above documents, the case was dismissed against the petitioner. The first appellate Court also dismissed the appeal on 23.03.2015.

(iii)The case bundle was handed over by the petitioner to his friend namely Siddharthan for filing an appeal. Due to work position, the petitioner handed over the bundle and credited Rs.5,000/- to the bank account of one Advocate Paulraj and handed over a sum of Rs.5,000/- in cash to Siddharthan,



C.M.P.(MD)No.5305 of 2021 in C.M.S.A(MD)SR.No.7064 of 2021

for filing an appeal. Because of the jurisdiction, the case bundle was handed over to an Advocate at Madurai, namely Balaji. When the petitioner enquired the said Balaji, he has stated that the appeal was numbered. The petitioner's friend Siddharthan died on 23.07.2019. When the petitioner enquired the advocate, he came to know that the advocate Balaji did not receive any bundle from the earlier counsel Paulraj. Hence the bundle could not be located, a copy application was filed on 03.10.2019, to reconstitute the bundle copies, which were made ready on 16.10.2019. Then only the petitioner was able to contact the advocate to file this petition. There was lock down during 26.03.2020 to 01.09.2020. Then again a copy application for decree copies was made on 06.01.2021 and the same was delivered on 20.01.2021. Hence the delay is neither willful nor wanton and the delay of 2026 days has to be condoned.

3.On the side of the petitioner it is stated that the petitioner followed the case up to the District Court and then he handed over the case to his friend. The bundle was misplaced and only after the death of his friend, the petitioner contacted the counsel and came to know that the appeal was not yet numbered and there was a delay of 2026 days.



C.M.P.(MD)No.5305 of 2021 in C.M.S.A(MD)SR.No.7064 of 2021

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4. On the side of the respondent it is stated that the petitioner has mentioned that himself and his friend contacted Madurai advocate Balaji and subsequently he has stated that after the death of his friend, he contacted the advocate which is contrary. The delay of 6 years was not at all explainable.

5. It is seen that the petitioner has filed a petition for divorce in H.M.O.P.No.86 of 2007, on the file of the Subordinate Court, Devakottai and the case was dismissed. The appeal filed by the petitioner in H.M.C.M.A.No. 7 of 2010 was also dismissed. The reasons stated for the delay is that though the petitioner engaged an advocate in Chennai, he failed to file an appeal and then after transfer, the learned counsel in Madurai informed that the appeal was numbered. In Paragraph-5, the first contention of the petitioner is that he contacted advocate Balaji in Madurai, who informed him that the appeal was numbered. Again the petitioner has mentioned that only after the death of his friend, he contacted the counsel on 23.07.2019. When the petitioner was able to contact the counsel earlier, the reason for not contacting the counsel at Madurai, till the death of his friend, is not properly explained.



C.M.P.(MD)No.5305 of 2021 in C.M.S.A(MD)SR.No.7064 of 2021

6. Another reason stated by the learned counsel for the petitioner is that the petitioner is being a driver, he was not able to follow the case. The petitioner was able to follow the case up to the District Court. The reason for handing over a case for a personal relief to a friend is unbelievable. The reason for non filing of copy application for decree copies, at the time of filing other copy application on 03.10.2019, was not explained. The reason for delay up to 26.03.2020 was not explained by the petitioner.

7. Hence this Civil Miscellaneous petition is dismissed and the Civil Miscellaneous Second Appeal is rejected at the SR stage itself.

02.09.2022

Index: Yes / No
Internet : Yes / No

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C.M.P.(MD)No.5305 of 2021 in C.M.S.A(MD)SR.No.7064 of 2021

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To

- 1.The District Judge, Sivagangai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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C.M.P.(MD)No.5305 of 2021 in C.M.S.A(MD)SR.No.7064 of 2021

R. THARANI, J

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Pre-Delivery Judgment made in
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02.09.2022