



C.M.P.Nos.718 & 1248 of 2024 in
CMSA Sr.Nos.148439 & 118769 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.P.Nos.718 & 1248 of 2024
in
CMSA Sr.Nos.148439 & 118769 of 2023

M.Ganesan
S/o.Late Muthaiaha ... Petitioner/Appellant in both petitions

Vs.

S.Nagalakshmi
D/o.Subburaj ... Respondent/Respondent in both petitions

Civil Miscellaneous Petitions filed under Section 5 of the Limitation Act seeking to condone the delay of 4246 and 4191 days in filing the present appeals.

Civil Miscellaneous Second Appeals filed under Section 28 of the Hindu Marriage Act, 1955 r/w Section 100 of the Civil Procedure Code, 1908, against the decree and judgment dated 20.12.2011 passed in C.M.A.Nos.09 and 08 of 2010 on the file of District Court, Nagapattinam, confirming the decree and judgment dated 08.07.2010 made in H.M.O.P.Nos.41 of 2008 and 44 of 2007 on the file Subordinate Judge, Nagapattinam.



C.M.P.Nos.718 & 1248 of 2024 in
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For Petitioner : Mr.I.Prakash Raj
[in both petitions]
For Respondent : Mr.R.Balaji
[in both petitions]

COMMON ORDER

These petitions have been filed seeking condonation of delay of 4246 and 4191 days in filing the present appeals against the decree and judgment passed in C.M.A.Nos.09 and 08 of 2010 on the file of District Court, Nagapattinam, confirming the decree and judgment dated 08.07.2010 made in H.M.O.P.Nos.41 of 2008 and 44 of 2007 on the file Subordinate Judge, Nagapattinam.

2. Heard Mr.I.Prakash Raj, learned counsel for petitioner and Mr.R.Balaji, learned counsel for respondent.

3. In the affidavits that have been filed in support of the petitions seeking condonation of delay in filing the appeals, it is stated that after the dismissal of the appeals in C.M.A.Nos.08 and 09 of 2010 on the file of District Court, Nagapattinam, there was some attempt made to live together and a mutual agreement was also entered into which was



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CMSA Sr.Nos.148439 & 118769 of 2023

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reduced to writing on 21.03.2012. In view of the same, CMSAs were not immediately filed. However, later, the agreement did not fructify and once again, the parties are separated and the wife had gone ahead and filed a domestic violence case against the husband. It is under these circumstances, the appeals have been filed with an extraordinary delay.

4. On carefully going through the affidavits, it is seen that the delay has not been properly explained. What has impelled the appellant to file these appeals is the fact that the husband and wife are living apart for more than 16 years and the marriage itself has become a deadwood. That apart, the wife has also initiated proceedings against the husband under the Domestic Violence Act. In the considered view of this Court, these are not valid reasons for condoning such an extraordinary delay in filing the appeals. These appeals were filed against the judgments dismissing the divorce petition filed by the husband and allowing the restitution of conjugal rights petition filed by the wife.

5. It is stated that the wife in spite of obtaining a decree for restitution of conjugal rights never tried to get the decree executed. That



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N.ANAND VENKATESH, J
gm

apart, the parties are also living apart for more than 16 years. If that is the case, it will always be left open to the husband to file a divorce petition u/s.13(1A)(ii) of the Hindu Marriage Act, 1955, seeking for divorce. Hence, instead of reviving a case which has come to an end in the year 2011 itself, the husband can take advantage of the subsequent events and file a divorce petition. Except giving this clarity, this Court does not find any ground to condone the exorbitant delay in filing the appeals.

In the result, these Civil Miscellaneous Petitions are dismissed.
Consequently, CMSA Sr.Nos.148439 & 118769 of 2023 are rejected.

04.04.2024

Speaking Order/Non-speaking Order

Index :Yes/No

Neutral citation: Yes/No

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To

1.The District Court,
Nagapattinam.

2.The Subordinate Judge,
Nagapattinam.

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