



C.M.P.No.29188 of 2023
in C.M.A (SR) No.157278 of 2023

C.M.P.No.29188 of 2023
in
C.M.A (SR) No.157278 of 2023

M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

(Order of the Court was made by K.GOVINDARAJAN THILAKAVADI, J.,)

The respondent herein /wife filed F.C.O.P No.37 of 2021 before the Family Court at Tiruvannamalai for divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 on the ground of cruelty.

2. Pending F.C.O.P, the respondent / wife filed an application in I.A.No.2 of 2022 under Section 24 of the Hindu Marriage Act, 1955, to direct the petitioner/husband to pay a sum of Rs.40,000/- per month to the respondent /wife and three children as interim maintenance and a sum of Rs.5,00,000/- towards the marriage expenses and for costs. The said application was allowed by the concerned Family Court directing the petitioner/husband to pay a sum of Rs.12,000/- per month [Rs.3,000/- to the respondent/wife and Rs.3,000/- to each of the three children] from the date of the petition till the date of order. Aggrieved by the said order, the



C.M.P.No.29188 of 2023
in C.M.A (SR) No.157278 of 2023

petitioner/husband has preferred the instant Civil Miscellaneous Appeal.

In preferring this appeal against the impugned order passed by the said Family Court in I.A.No.2 of 2022, there was a delay of about 350 days .

3. In the affidavit filed in support of the petition, the petitioner has stated that due to Covid-19 impact in his family, he could not take any steps to file the instant appeal in time.

4. The petitioner, who appears as party-in-person, submits that on the causes shown in this application, the delay occurred in filing this appeal may be condoned.

5. The respondent /wife had filed a counter affidavit *inter alia* contending that the causes allegedly shown seeking condonation of delay is nothing but distorting the facts. Therefore, the explanation given for the delay cannot be accepted.

6. Heard both sides and perused the records.



C.M.P.No.29188 of 2023
in C.M.A (SR) No.157278 of 2023

7. Admittedly, there is a delay of 350 days in preferring the instant appeal. The principle ground stated in the affidavit filed in support of the petition is that due to Covid-19 impact in his family, the petitioner was unable to prefer the instant appeal in time. As per 19(3) of the Family Court Act, 1984, the period of limitation for filing an appeal against a judgment or order of the Family Court is 30 days. However, if sufficient cause is shown, the delay in filing can be condoned under Section 5 of the Limitation Act, 1963. However, there is no cap beyond 30 days. Moreover, acceding to the prayer for condonation of delay is discretion of a Court than the rights of the parties.

8. We have carefully examined the cause shown by the petitioner. We think conscience of the Court should be clear. Therefore, on the ground of delay let us not extinguish any right which legitimately belong to the petitioner. We therefore sustain the petitioner's submission.

9. In the interest of justice, the above petition is allowed and the delay is condoned.



WEB COPY



C.M.P.No.29188 of 2023
in C.M.A (SR) No.157278 of 2023

M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

gpa

10. Registry is directed to number the appeal, if it is otherwise in order.

(M.S.,J.) (K.G.T.,J.)

03.01.2024

($\frac{1}{2}$)

gpa

C.M.P.No.29188 of 2023
in C.M.A (SR) No.157278 of 2023