



C.M.P.(MD).No.707 of 2024 in C.M.A.(MD).No.SR2729 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

**C.M.P.(MD).No.707 of 2024 in
C.M.A.(MD).No.SR2729 of 2024
and C.M.A.(MD).No.SR2729 of 2024**

K.Dharmaraj ... Petitioner /Appellant

Vs.

P.Helen Jeba Sheela ... Respondent/Respondent

PRAYER in C.M.P.(MD).No.707 of 2024: Civil Miscellaneous

Petition is filed under Section 5 of the Limitation Act, to condone the delay of 1384 days in filing the above said Civil Miscellaneous Appeal against the Judgment and Decree dated 12.11.2018 made in Divorce Original Petition No.224 of 2018 on the file of the Additional District and Sessions Judge (Fast Track Court), Kanniyakumari at Nagercoil.

PRAYER in C.M.A.(MD).No.SR2729 of 2024: Civil Miscellaneous

Appeal is filed under Section 55 of the Indian Divorce Act, to set aside the Judgment and Decree dated 12.11.2018 made in Divorce Original Petition No.224 of 2018 on the file of the Additional District and Sessions Judge (Fast Track Court), Kanniyakumari at Nagercoil.



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For Petitioner/Appellant : Mr.V.Sasikumar

For Respondent/Respondent : Mr.R.Murugan

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ORDER

This petition has been filed to condone the delay of 1384 days in filing the above said Civil Miscellaneous Appeal against the Judgment and Decree dated 12.11.2018 made in Divorce Original Petition No.224 of 2018 on the file of the Additional District and Sessions Judge (Fast Track Court), Kanniyakumari at Nagercoil.

2.Divorce Original Petition No.224 of 2018 was filed by the respondent herein, before the Additional District Judge, Kanniyakumari, seeking the relief of decree of divorce dissolving the marriage that was solemnised between the petitioner and the respondent on 04.03.1996. The petitioner herein appeared and filed his response.

3.Pending further enquiry a petition was taken out by the respondent herein in I.A.No.264 of 2018 seeking interim alimony. It was allowed by directing the petitioner herein to pay a sum of Rs.7,500/- p.m. and addition some of Rs.10,000/- for litigation expenses.



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4. But, the petitioner did not pay the interim alimony as directed.

So the defence taken by the petitioner was struck off by relying upon the Judgment of the Honourable Supreme Court and other Courts and finally divorce was granted by allowing the petition.

5. The present petition is filed seeking condonation of delay of 1384 days occurred in filing the appeal against the decree dated 12.11.2018.

6. After passing of the decree, there were several rounds of Mediation between the parties. The respondent did not consider the interest of the children. Since the efforts taken by him for reunion failed, now, he wants to file appeal against the decree of divorce. Hence, he filed copy application only on 28.11.2023 and it was delivered to him only on 05.01.2024. Hence, there is a delay in preferring the appeal.

7. Counter was filed by the respondent stating that to prolong the issue only this petition has been filed. A suit in O.S.No.161 of 2021 was



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filed by her before the Family Court, Nagercoil, seeking maintenance and a petition under Order 38 Rule 5 (i to iii) r/w Section 94(b) CPC was filed before that Court and after hearing enquiry the matter is pending for orders. Having known all the proceedings, this petition is filed belatedly with ulterior motive.

8.Heard both sides.

9.The only ground that is made in this petition is that after the decree of divorce, he made several attempts to resolve the issue. Because of that there is a delay in filing the copy application and getting the certified copy of the order.

10.Perusal of the original order in Divorce Original Petition No. 224 of 2018 shows that because of the non payment of interim alimony, defence was struck off. Unless the petitioner pays the entire arrear amount, the civil miscellaneous appeal itself may not be maintainable. He ought to have filed application before the concerned trial Court itself to restore the petition by complying the order. Without resorting these



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proceedings, he filed this application without any basic ground or reason.

So liberty is granted to the petitioner herein to workout his remedy as per law. I find absolutely no reason to condone the delay.

11. Accordingly, this civil miscellaneous petition is dismissed with the above said liberty. Consequently, civil miscellaneous appeal is also rejected at the SR stage itself. No costs.

06.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
TM

To

1. The Additional District and Sessions Judge, (Fast Track Court),
Kanniyakumari at Nagercoil.
2. The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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