



C.M.P(MD)No.16898 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.12.2024

CORAM

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

C.M.P(MD)No.16898 of 2023

in

C.M.S.A(MD)No.SR 80088 of 2023

Senthil

...Petitioner/ Appellant

-Vs-

Thillai

... Respondent/Respondent

PRAYER in C.M.P(MD)No.16898 of 2023: Civil Miscellaneous Appeal is filed under Section 5 of the Limitation Act, to condone the delay of 512 days in filing the main civil miscellaneous second appeal against the order passed in H.M.C.M.A.No.25 of 2019 by the III Additional Judge Tirunelveli District, dated 27.08.2021 confirming the fair and decreetal order dated 19.08.2019 made in H.M.O.P.No.37 of 2016 on the file of the learned Subordinate Judge, Valliyoor, Tirunelveli.



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Prayer in C.M.S.A(MD)No.SR 80088 of 2023: This Civil Miscellaneous Appeal is filed under Section 100 of C.P.C., against the fair and decreetal order dated 27.08.2021 made in H.M.C.M.A.No.25 of 2019 on the file of the learned III Additional District Judge, Tirunelveli confirming the fair and decreetal order dated 19.08.2019 made in H.M.O.P.No.37 of 2016 on the file of the learned Subordinate Judge, Valliyoor, Tirunelveli.

For Petitioner : Mr.N.Kamesh

ORDER

This Civil Miscellaneous Petition is filed to condone the delay of 512 days in filing the main civil miscellaneous second appeal.

2.Heard the learned counsel for the petitioner.

3.The petitioner herein filed a petition in H.M.O.P.No.37 of 2016 before the Subordinate Court, Valliyoor, Tirunelveli District, for dissolution of marriage. The said petition was dismissed on 19.08.2019. Aggrieved over the same, the petitioner preferred an appeal in H.M.C.M.A.No.25 of



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2019 before the III Additional District Court, Tirunelveli, to set aside the fair and decreetal order dated 19.08.2019 passed by the learned Subordinate Judge, Valliyoor, in H.M.O.P.No.37 of 2016. After considering the oral and documentary evidence, the first appellate Court dismissed the said appeal on 27.08.2019 by confirmed the Order of dismissal passed by the learned Subordinate Judge, Valliyoor.

4.According to the petitioner, H.M.C.M.A.No.25 of 2019 was dismissed on 27.08.2019 and hence, the appeal has to be filed within 90 days from the date of the said order. During 2019, due to Covid-19 lock-down, the Court was not functioning. Therefore, he was not able to get the copies. Thereafter, he was suffering from chronic diabetes and blood pressure. Hence, on 13.06.2023 he applied copy application as per the advise of his Counsel on record and the same was ready only on 06.07.2023 and he received on 14.07.2023 and hence, the delay of 512 days occurred.

5.I have carefully considered the submissions made by the learned counsel for the petitioner and also perused the materials available on record.



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6.The delay caused is for a long period. It is not his case that he was hospitalised and not in a position to meet his counsel. The first appellate Court dismissed his appeal on 27.08.2019. If he has applied for copy application on 13.06.2023 would finally indicate the fact that he was not diligent in pursuing the matter. The reasons assigned for the delay caused are not at all convincing and acceptable, as the delay period is more than one year and 5 months and more so, the reasons assigned cannot be taken as sufficient cause.

7.Considering the facts and circumstances of the case, the petitioner lacks bonafide and hence, this petition stands dismissed. Consequently, the Civil Miscellaneous Second Appeal is rejected at SR stage itself. No costs.

31.12.2024

NCC:Yes/No

Index:Yes/No

Internet::Yes/No



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To

1. The III Additional Judge,
Tirunelveli District.
- 2.The Subordinate Judge,
Valliyoor, Tirunelveli.



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R. KALAIMATHI,J.

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