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C.M.A.No.1458 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.No.1458 of 2025

and

C.M.P.No.12633 of 2025

G. Ranjitha W/o. K. Arunkumar

... Appellant

vs.

K. Arunkumar S/o. Kuzhandhaivel

.. Respondent

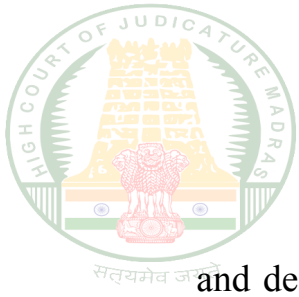
PRAYER: Civil Miscellaneous Appeal filed under Section 19(1) of Family Court Act, 1984 against the judgment and decree dated 19.10.2024 passed in H.M.O.P. No.128 of 2023 on the file of the learned II Additional Sub Court, Coimbatore.

For Appellant : Mr. I. Abrar Md. Abdullah

JUDGMENT

(Judgment of the Court was made by P.DHANABAL,J.)

This Civil Miscellaneous appeal has been preferred as against the fair



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and decreetal order passed by the II Additional Sub Court, Coimbatore in H.M.O.P. No.128 of 2023 dated 19.10.2024, wherein the appellant herein filed a petition under Section 9 of Hindu Marriage Act for restitution of conjugal rights and the same was dismissed. Challenging the said order, the present appeal has been preferred.

2. The Marriage between the appellant and respondent was solemnized on 15.02.2021 at Periyannayagi Amman Temple, Pazhangarai, Avinashi, Tiruppur and they lived as husband and wife. Thereafter, due to some misunderstanding between the parties, the respondent herein filed a petition for divorce before the II Additional Sub Court, Coimbatore in H.M.O.P. No.79 of 2022 and thereafter, the appellant herein has filed a petition before the II Additional Sub Court, Coimbatore for restitution of conjugal rights in H.M.O.P. No.128 of 2023. Both the petitions were jointly tried and disposed of through a common order and the petition filed by the respondent husband in H.M.O.P. No.79 of 2022 was allowed and the marriage was dissolved by granting divorce and the petition filed by the appellant wife in H.M.O.P. No.128 of 2023 was dismissed. Aggrieved by the said order, the present appeal has been preferred by the wife.



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3. This Court raised a point about maintainability of appeal before this Court. As per Section 28 of Hindu Marriage Act, the appeals from decrees and orders, passed by the original civil jurisdiction clearly shows that all the decrees made by the Court in any proceeding under this Act shall be appealable, to which the appeals ordinarily lie from the decisions of the Court given in the exercise of its original civil jurisdiction, except on the subject of costs. In the case on hand also, the II Additional Sub Court, Coimbatore has passed order by dismissing the application filed for restitution of conjugal rights. Therefore, the appeal would lie only before the District Court, Coimbatore.

4. The learned counsel appearing for the appellant, at this juncture, would contend that though inadvertently the appeal was filed before this Court, instead of filing before the District Court, the present appeal may be transferred to the file of District Court, Coimbatore by exercising power under Section 24(1)(a) of the Code of Civil procedure. In order to support his contention, he has relied upon the judgment of Hon'ble Division Bench of this Court in ***S. Senthilkumar vs. Suseela in C.M.A. No.2398 of 2018***, wherein this Court, in Para Nos.10 and 11, held as follows:

"10.As the learned counsel appearing for the appellant has



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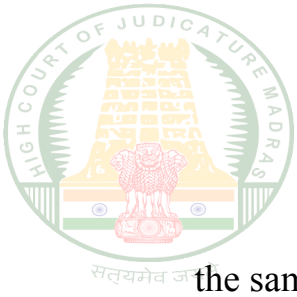
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wrongly chosen this Court instead of choosing the District Court, for the fault on the part of the counsel, no litigant shall be put to prejudice. The Hon'ble Apex Court in Rafiq and others vs. Munshilal and Others reported in (1981) 2 SCC 788 has held that due to the inaction, deliberate omission or misdemeanor of the counsel, parties should not be put to suffer. In yet another decision in Hetram Kashinath Shende vs. Sangeetha reported in MANU/MH/1713/2012, the Bombay High Court (Nagpur Bench) has held that the innocent litigant should not suffer for the mistake either deliberate or intentional on the part of the advocate.

11. Taking note of the fact that the appeal has been filed within the statutory limit, accepting the legal position that no litigant shall be put to face any prejudice, this Court is inclined to transfer the appeal, accordingly, exercising power under Section 24 (1)(a) of the Code of Civil Procedure, this appeal stands transferred to the District Court, Villupuram for expeditious disposal, on merits. On such transfer, learned District Judge, Villupuram is directed to take up the matter and dispose of the same on merits and in accordance with law as expeditiously as possible".

5. In the case on hand also, the appeal ought to have been filed before the District Court. Instead of that, the appellant filed the appeal before this Court, thereby, in view of the above said judgment, this Court is inclined to transfer the appeal by exercising power under Section 24(1)(a) of the Code of Civil procedure and this appeal shall stands transferred to the District Court, Coimbatore for disposal on merits in accordance with law.

6. The Registry is directed to transfer the case to the Principal District Court, Coimbatore and on such transfer, the learned Principal District Judge, Coimbatore is directed to take up the matter and dispose of



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the same on merits in accordance with law.

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7. In view of the above said observations and directions, this Civil Miscellaneous Appeal is disposed of. No costs. The connected miscellaneous petition is closed.

(R.S.K.J.) & (P.D.B.J)

21.07.2025

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mjs

Internet : Yes

Index: Yes/No

Neutral Citation: Yes/No

To

1. The Principal District Judge, Coimbatore.
2. The II Additional Sub Judge, Coimbatore.



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R. SURESH KUMAR,J
and
P.DHANABAL,J

(mjs)

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