



C.R.P.No.3234 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-10-2025

CORAM

THE HONOURABLE MR.JUSTICE P.B. BALAJI

C.R.P.No.3234 of 2024 and CMP No.17287 of 2024

S.Mohan Kumar

.... Petitioner

VS

S.Uma Maheswari

... Respondent

Revision filed under Section 115 of the Civil Procedure Code against the fair and decreetal order passed in I.A.No.2 of 2024 (condone delay petition) in HMOP No.14 of 2019 dtd 03.04.2024 on the file of Subordinate Court, Dharapuram.

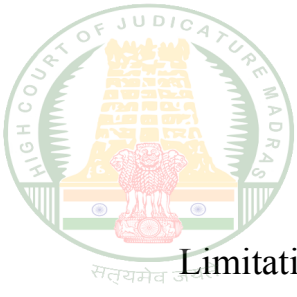
For Petitioner : Mr.Deepan Uday

For Respondents : Lt.N.Ponraj

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondent.

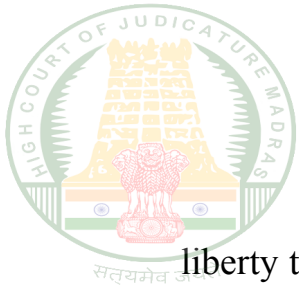
2. At the outset, the learned counsel for the respondent challenged the maintainability of the revision itself, though the revision has been filed challenging the dismissal of an application filed under Section 5 of



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Limitation Act in taking out an application under Order IX Rule 13 of Civil Procedure Code for setting aside the exparte decree for divorce. It is the contention of the learned counsel for the respondent that when the applications for condonation of delay as well as application for setting aside the exparte decree are disposed of together, then, the only remedy available to the aggrieved party is to prefer an appeal and not a revision. In support of his contention, learned counsel relied on the decision of the Hon'ble Supreme Court in the case of *The Koushik Mutually Aided Cooperative Housing Society vs Ameena Begum and Another* reported in **2023 INSC 1065**. In the said case, an identical proposition arose before the Hon'ble Supreme Court and the Apex Court has held that when the trial Court dismisses the application seeking condonation of delay in filing an application under Order IX Rule 13 of Civil Procedure Code and also consequently the petition filed under Order IX Rule 13 of Civil Procedure Code also stands dismissed, then the remedy open to the aggrieved applicant is to prefer an appeal and not a revision.

3. Learned counsel for the revision petitioner, on being brought to the notice about the said decision of the Hon'ble Supreme Court, sought for



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liberty to file an appeal and also prays for the time consumed in prosecuting this revision before this Court to be exempted/condoned.

4. In fact, even in the case before the Hon'ble Supreme Court, the Hon'ble Supreme Court, while holding that the civil revision petition was not maintainable and regular appeal has to be filed under Order 43 Rule 1 of Civil Procedure Code, directed the appeal to be preferred within a particular date and if so filed, then, limitation would not be raised by the appellate Court.

5. In the light of the above, while dismissing the civil revision petition as not maintainable, in the light of the ratio laid down by the Hon'ble Supreme Court, I am inclined to grant time to the revision petitioner to prefer an appeal.

6. Accordingly, the revision petitioner is permitted to file an appeal within a period of eight weeks from the date of receipt of the certified copies of the fair and decreetal order in I.A.No.2 of 2024. However, it is made clear

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that since as on date, the petitioner has not challenged the dismissal of the application filed under Order IX Rule 13 of Civil Procedure Code, he has to necessarily take out an application for condonation of delay in preferring the appeal.

7. The appellate Court shall consider the time lost by the revision petitioner in prosecuting this revision before this Court while disposing of application filed under Section 5 of the Limitation Act.

8. With the above direction, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

16.10.2025

Index:yes/no

Website:yes/no

Speaking Order/Non-Speaking Order

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To

The Subordinate Court, Dharapuram

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