



C.R.P.No.891 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.891 of 2024

V.Selvakumar

... Petitioner

vs.

J.Lavanya

... Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set-aside the order dated 04.11.2023 passed by the Principal District Court, Salem in I.A.No.1 of 2023 in Unnumbered CMA.No. of 2023 filed by the respondent under Order 41 Rule 3(A) of CPC seeking to condone the delay of 196 days in filing the C.M.A.

For Petitioner : Mr.K.P.Sathish Kumar

For Respondent : Mr.K.Jayachandiran



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ORDER

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The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the application filed by the petitioner seeking to condone the delay of 196 days in filing appeal against the decree for restitution of conjugal rights passed against the petitioner.

2. According to the petitioner, the respondent filed original petition seeking restitution of conjugal rights and the same was decreed on 06.12.2022 against the petitioner. Since the petitioner was suffering from ulcer and was taking treatment at Coimbatore and also the fact he was also engaged in admission of his son under his care, he could not file appeal immediately. It is further stated that the petitioner met his Advocate on 19.04.2023 and acquired knowledge that the certified copies were not received. Immediately on instructions from the petitioner, the certified copies were applied for on 19.04.2023 and thereafter, the appeal was presented before the Appellate Court during July-2023 with a delay of 196 days.



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3. The Court below dismissed the condone delay application on the ground that during the period, the petitioner filed an appeal challenging the dismissal of the petition filed by him seeking divorce before the High Court on 12.04.2023. It was also stated that at the relevant point of time the petitioner appeared before the Judicial Magistrate No.1, Mettur in maintenance case and the same was allowed on 29.05.2023.

4. A perusal of the affidavit filed by the petitioner in support of the condone delay petition would indicate he met his counsel on 19.04.2023, thereafter, he had taken steps to get the certified copies of the decretal order, dated 06.12.2022. It is seen from the impugned order, the petitioner filed an appeal before the High Court in the connected divorce petition on 12.04.2023 and maintenance case was ordered against him on 29.05.2023. However, the illness pleaded by the petitioner was prior to the above said period. The petition filed by the respondent seeking restitution of conjugal rights was decreed on 06.12.2022 and the petitioner contacted his counsel on 19.04.2023. In the meantime, according to the averment found in the affidavit, he was suffering from illness and was taking treatment at Coimbatore.



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5. Merely because, the petitioner appeared in the legal proceedings during April-2023, we cannot come to the conclusion that the illness pleaded by him prior to the said period was not correct. Therefore, taking into consideration the reason assigned in the affidavit filed in support of the condone delay petition, the length of delay and the nature of the decree passed against him, this Court is inclined to allow the civil revision petition by setting aside the impugned order passed by the Trial Court. The condone delay petition in I.A.No.1 of 2023, stands allowed.

6. Accordingly, the Civil Revision Petition is allowed. No costs.

02.01.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm



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To

The Principal District Court,
Salem.



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S.SOUNTHAR, J.

dm

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