



C.R.P.(MD)No.974 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.974 of 2019

and

C.M.P.(MD)No.5453 of 2019

Mahendran, S/o.Malaisamy

.. Petitioner

Versus

Muthirulayee @ Jothi, D/o.Ramasamy

.. Respondent

Prayer :- Petition filed under Section 115 of the Civil Procedure Code, to call for the records pertaining to the fair and decreetal order dated 28.01.2019, made in I.A.No. 413 of 2018 in H.M.O.P.No.141 of 2012, on the file of the Family Court, Sivagangai.

For Petitioner : Mr.K.Chengiz Khan

For Respondent : Mr.S.Srinivasa Raghavan

ORDER

The petitioner is aggrieved by the impugned order dated 28.01.2019, passed by the learned Judge, Family Court, Sivagangai, in I.A.No.413 of 2018, declining to condone the delay of 1650 days in filing the petition to restore the case in H.M.O.P.No.141 of 2012, on the file of the Sub Court, Sivagangai. The said H.M.O.P. was dismissed for non-prosecution on 06.12.2013. The relevant portion of the impugned order reads as under:-



"4. Arguments heard both sides. Available records perused. This petition in HMOP 141/2012 was filed before Sub Court Sivagangai. This petitioner filed that case seeking the relief of divorce against the respondent/wife on the ground of cruelty. While that case was pending at Sub Court Sivagangai, the respondent appeared therein and filed the counter on 5.7.2013. Subsequently, the above case was posted for enquiry. But the enquiry was not commenced by the petitioner side on 18.7.2013, 22.8.2013, 21.11.2013, 6.12.2013. Hence on 6.12.2013 the above main case was dismissed at Sub Court Sivagangai for the default of the petitioner.

5. Now the petitioner is taking a stand that he was working in Army at other State and hence he was not able to file the restoration petition in time. In fact, the reason adduced by the petitioner is not at all justifiable one, on perusing the case records, this petitioner never turned up to court for enquiry in the year 2013 and the case was dismissed for default on 6.12.2013. At last, this petitioner filed this application to restore the main case in the year 2018. So, it is well obvious that nearly about 5 years, this petitioner has not at all come forward to file restoration petition.

6. Even on considering the nature of service doing by the petitioner, this petitioner cannot deny that he has not come to his native in the past 5 years period. Further it is alleged by the respondent side that there was a criminal case lodged against the petitioner and he obtained an anticipatory bail order with showing the reference of divorce case. If it be so, the perfect say that he was not aware of the dismissal of the main case during the year 2013. Bail order was said to have obtained by the petitioner in the year 2015. But, this restoration petition has been filed only in the year 2018.



7. *There is an enormous and inordinate delay in the filing of restoration petition and the petitioner was not able to prove that the above delay is against his knowledge. In such circumstance, the court cannot close its eyes to do undue favour to the petitioner against the principles of law and natural justice. Court cannot be carried out with injustice on the basis of an unacceptable lethargic reasons. If this type of inordinate delay is condoned for such flimsy reasons, then the real object of having the Limitation Act will be defeated. The object of the Limitation Act is to curtail the multiplication of cases which is not at all progressed by the party within prescribed time. If any one of the parties can easily restore this case even after many number of years, before the court of law, by filling the type of this applications, the real object of the enactment of Limitation Act will be thrown into ditch*

8. *In this case, the petitioner has lethargically taken 1650 days delay to file restoration petition to get the relief of divorce against his wife, that too after a case on bigamy has been registered against the petitioner. So, it is obvious that this petitioner has willfully delayed in filing the restoration petition for years together and subsequently with false averment this petitioner has come forward with this application before this court.*

9. *Considering all the above facts and circumstance, this court is of the view that this petitioner has not satisfactorily explained the delay of 1650 days in filing restoration petition and it is obvious to note that this petitioner has willfully taken his own time for filing this application. Hence it is decided that it is not justifiable to condone the delay of 1650 days in filling the restoration petition and this petition is deserved to be dismissed as devoid on merits.*



In the result, it is hereby ordered that this petition is dismissed. That there shall be no order for the cost."

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2. The specific case of the petitioner is that, both the petitioner and the respondent got married on 22.08.2004. However, on account of cruelty meted out, the petitioner was left with no other option to file H.M.O.P.No.141 of 2012, for divorce, before the Sub Court, Sivagangai. It is the further case of the petitioner that he being an employee of the Indian Army, was transferred to all over the Country and therefore, he could not appear when the case was listed for hearing.

3. The learned counsel for the petitioner submitted that the respondent had also filed H.M.O.P.No.67 of 2015 for restitution of conjugal rights. However, it was dismissed for non-prosecution on 04.08.2016. It is submitted that though the petitioner has not explained the reasons for the delay in filing the application to restore H.M.O.P.No.141 of 2012 clearly, the fact remains that this is a case where the marriage between the petitioner and the respondent has irretrievably broken down. It is further submitted that the petitioner is also maintaining the children born to him and the respondent and is agreeable for any mutual settlement.

4. The learned counsel for the petitioner further submitted that the respondent is also a Government Servant and is employed gainfully and in order to harass the petitioner, she is objecting the present Civil Revision Petition.



5. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent and also perused the affidavit filed by the petitioner.

6. The averments made in the affidavit filed by the petitioner in I.A.No.413 of 2018 for restoring H.M.O.P.No.141 of 2012, reads as under:-

"3. இந்த நிர் வழக்கும் எதிர்மனுதாரரிடமிருந்து விவாகரத்து கோரி என்னால் சிவகங்கை சார்பு நீதிமன்றத்தில் தாக்கல் செய்யப்பட்டது. ஷை வழக்கிலும் எதிர்மனுதாரர் ஆஜராகி எதிர்உரை தாக்கல் செய்த பின்னர் எனது தரப்பு விசாரணைக்காக கடந்த 06.12.2013ம் தேதி இறுதி வாய்தாவும் ஏற்பட்டிருந்தது. நானும் பணி நிமித்தம் வெளிமாநிலங்களில் பணிபுரிந்து வந்ததால் எனது வழக்கறிஞரை அடிக்கடி தொடர்பு கொள்ளவோ, வழக்கின் நிலை குறித்து விசாரித்து தெரிந்து கொள்ளவோ இயலாமல் போய்விட்டது. இத்துடன் ஷை தேதியில் எனது சொந்த ஊருக்கு வரவும் சமூகம் நீதிமன்றத்தில் ஆஜராகவும் இயலாமல் போய்விட்டது. பின்னீடு விடுமுறையில் சிவகங்கை வந்து எனது வழக்கறிஞரை சந்தித்த போது தான் ஷை தேதியில் சமூகம் நீதிமன்றத்தில் என்னை அழைத்தும் நான் ஆஜராகாததால் எனது வழக்கும் Dismissed for default - க்காக கடந்த 06.12.2013 தேதியில் தள்ளுபடியாகிவிட்ட விபரமும் எனக்கு தெரியவந்தது. இதனால் ஷை வழக்கையும் Restore செய்வதற்கு 30 நாட்களுக்குள் மனுத் தாக்கல் செய்ய இயலாமல் போய்விட்டது. ஷை மனு தாக்கல் செய்வதற்கும் 1650 நாட்கள் காலதாமதமாகிவிட்டது. இவ்வாறு மனு தாக்கல் செய்வதற்கு ஏற்பட்ட காலதாமதமும் வேண்டுமென்றே ஏற்பட்டதல்ல. தெய்வாதீனமாக ஏற்பட்டதேயாகும். எனவே இந்த நிர் வழக்கையும் Restore செய்வதற்கு மனுத் தாக்கல் செய்வதில் ஏற்பட்ட 1650 நாட்கள் காலதாமதத்தை மன்னித்து இன்று தாக்கல் செய்வதை ஏற்றுக்கொள்ள உத்தரவாக வேண்டியது அவசியமாக



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உள்ளது. இல்லாவிடில் எனக்கும் தாங்க இயலாத கஷ்ட, நஷ்டம் சம்பவித்துவிடும்."

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7. The only reason given by the petitioner for the delay in filing the application to restore H.M.O.P.No.141 of 2012 is that, he was unable to contact his counsel due to his transfer and that it was on account of Act of God.

8. The trial Court has rightly rejected the application for condoning the delay. Therefore, there is no case made out for interfering with the impugned order dated 28.01.2019, passed by the learned Judge, Family Court, Sivagangai, in I.A.No.413 of 2018 in H.M.O.P.No.141 of 2012. Hence, this Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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27.03.2023

To

The Judge,
Family Court,
Sivagangai.



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Order made in
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