

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.3741 of 2014
and M.P.No.1 of 2014

P.Manivannan

... Petitioner

Vs.

A.Saraswathy

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 15.07.2014 made in I.A.No.27 of 2014 in H.M.O.P.No.82 of 2009 on the file of the Family Court, Erode.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.S.Chandrasekaran

ORDER

Challenging the fair and decreetal order passed in I.A.No.27 of 2014 in H.M.O.P.No.82 of 2009 on the file of the Family Court, Erode, the petitioner has filed the above Civil Revision Petition.

2.The respondent filed H.M.O.P.No.82 of 2009 on the file of the Sub Court, Erode for divorce on the ground of cruelty.

3.The trial Court passed an exparte decree for divorce in H.M.O.P.No.82 of 2009. Thereafter, the petitioner filed an application to set aside the exparte order, which was also dismissed by the trial Court. Simultaneously, the respondent filed an application in I.A.No.84 of 2009 to direct the petitioner to return the items set out in the annexed petition and also to return the value set out therein within a time frame.

4.The petitioner filed his counter wherein he has stated that he spent a sum of Rs.5,20,000/- for the purchase of various items set out in paragraph - 6 of the counter affidavit. Subsequently, since the petitioner remained absent, the trial Court called him absent and allowed the petition in I.A.No.84 of 2009 on 20.08.2010. Thereafter, the petitioner filed an application in I.A.No.27 of 2014 in I.A.No.84 of 2009 to condone the delay of 1064 days in filing the petition to set aside the exparte order passed in I.A.No.84 of 2009. In the affidavit filed in support of the petition, the petitioner has stated that he was working as Assistant Engineer in Highways Department and due to the nature of work load, he was not in a position to

file the petition to set aside the exparte order passed in I.A.No.84 of 2009 within time.

5.Further, the learned counsel for the petitioner submitted that the petitioner was transferred from one place to another, therefore, he was not in a position to file the petition in time.

6.The learned counsel for the respondent submitted that the reasoning given by the petitioner cannot be accepted.

7.On a perusal of the order passed in I.A.No.84 of 2009, the trial Court had allowed the application since there was no representation on behalf of the petitioner. Since the petitioner has disputed the averments stated in the affidavit filed in support of the petition in I.A.No.84 of 2009 and has also given various details in the counter affidavit, the trial Court could have given an opportunity to the petitioner to contest the application on merits. Though the petitioner has given acceptable reason for his non-appearance and for not filing the application to set aside the exparte order passed in I.A.No.84 of 2009 in time, the Family Court has erroneously dismissed the application.

8. In these circumstances, I am of the considered view that the petitioner can be given another opportunity to contest the application on merits. Since the delay is on higher side, the same can be condoned on payment of costs. Accordingly, the fair and decreetal order passed in I.A.No.27 of 2014 in I.A.No.84 of 2009 in H.M.O.P.No.82 of 2009 are set aside and the application in I.A.No.27 of 2014 stands allowed on condition the petitioner paying a sum of Rs.15,000/- (Rupees fifteen thousand only) to the respondent on or before 22.12.2015. It is made clear that the petitioner shall make the payment of the said sum of Rs.15,000/- to the learned counsel appearing for the respondent in this Civil Revision Petition before this Court within the stipulated time. The Family Court, Erode is directed to dispose of the application in I.A.No.27 of 2014 in H.M.O.P.No.82 of 2009, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

9. With this observation, the Civil Revision Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

08.12.2015

Note: Issue order copy on 15.12.2015.

To

The Family Court,
Erode.

M.DURAIWAMY,J.
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