

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.164 of 2015  
and  
M.P.No.1 of 2015

Premshankar Narayan

.. Petitioner

Vs

Lalitha Narayan

.. Respondent

Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code to set aside the fair and decretal order dated 13.01.2015 made in M.P.No.357 of 2014 in M.C.No.545 of 2006 on the file of II Additional Family Court Judge, Chennai.

For Petitioner : Mr.N.Prem Kumar  
For Respondent : Mr.G.Anand

O R D E R

Being aggrieved by the order, made in M.P.No.357 of 2014 in MC No.545 of 2006 dated 13.01.2015, on the file of the learned II Additional Principal Judge, II Additional Family Court, Chennai, condoning the delay of 244 days in filing restoration petition in MC No.545 of 2006, husband has preferred the criminal revision case.

2. Material on record discloses that a claim for maintenance has been made in 2006. Between 2006 and 2015, there are several proceedings which includes an order made in Crl.R.C.No.1438 of 2012 dated 03.07.2013, in which having regard to the long pendency of the maintenance case, this Court has directed the learned II Additional Principal Judge, II Additional Family Court, Chennai, to enquire the maintenance case, on a day-to-day basis and complete the same, preferably within a period of two weeks, from the date of passing the order in Criminal Revision Case.

3. Despite the specific directions, wife was not represented in the family Court. Therefore, the learned II Additional Principal Judge, II Additional Family Court, Chennai, vide order dated 23.07.2013, has dismissed M.C.No.545 of 2006 for default. After nearly 244 days, wife has filed, M.P.No.357 of 2014, for restoration

of the dismissed M.C.No.545 of 2006, contending interalia that she was ill and was also depressed. She has also submitted that she has heart problems.

4. Though the husband/revision petitioner has objected to the cause shown for condonation, the learned II Additional Principal Judge, II Additional Family Court, Chennai, vide order dated 13.01.2015, has condoned the delay of 244 days in filing the restoration petition as hereunder.

"..It is a settled principle of law, that, in Section 5 (Limitation Act) petition, the rule of liberal approach is to be followed. With this in my mind I proceed further. Both the parties have crossed their sixties. Too much technicalities should not come in the way of administration of justice. Petitioner does not lack bonafides. Hence in the stated circumstances and in the interest of justice, this petition stands allowed. No costs."

5. Though, Mr.N.Prem Kumar, learned counsel for the husband assailed the correctness of the order, allowing the condonation petition, on the ground inter alia that the Court below has failed to consider the casual and lethargic attitude on the part of the respondent/wife and further contended that husband has been made to litigate in several proceedings and further contended that it is the wife, who had failed to appear for cross examination before the Court below on various dates and thus, protracted the proceedings, without any just cause and bonafide, this Court is not inclined to reverse the impugned order.

6. Having regard to the settled principle of law that the Court while considering an application for condonation should have liberal approach and that, parties should be permitted to adduce evidence on the rights claimed and disputed, this Court is not inclined to interfere with the impugned order.

7. Before the Family Court, parties have to appear in person. Certainly, the petitioner/husband, would have appeared on the dates of hearing. But the respondent, who has obtained an order in Cr1.R.C.No.1438 of 2012 dated 03.07.2013, expressing certain urgency had failed to appear before the family Court, which occasioned the dismissal of M.C.No.545 of 2006 for default. Considering the hardship faced by the petitioner/husband, on account of the non appearance, this Court deems it fit to impose a cost of Rs.1,000/- on the respondent to be paid to the Tamilnadu Advocate Clerks' Association, High Court, Madras.

8. Learned counsel for the respondent submitted that the cost ordered would be paid by 03.03.2015. It is made clear that if the ordered cost is not paid on or before 03.03.2015 and the receipt is not produced before the learned II Additional Principal Judge, II Additional Family Court, Chennai, the order made in this revision would stand vacated without any further reference to this Court.

9. Learned II Additional Principal Judge, II Additional Family Court, Chennai, is directed to dispose of M.C.No.545 of 2006 on a day-to-day basis within two weeks from the date of receipt of a copy of this order.

10. Tamilnadu Advocate Clerks' Association, High Court Madras, is permitted to receive the cost of Rs.1,000/-, without insisting for a copy of this order.

11. With the above directions, the Criminal Revision Case is disposed of. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional Principal Judge,  
II Additional Family Court, Chennai.

2. The Public Prosecutor, High Court, Madras.  
+ 1 cc to Mr.N. Prekumar, Advocate Sr.11069  
+ 1 cc to Mr.G. Anand, Advocate Sr.10964

Cr1.R.C.No.164 of 2015

NM(CO)  
Eu 2.03.15

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