

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 27.01.2015

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P(NPD)No.138 of 2015

Peter Sukumar Prakash

.. Petitioner / Respondent

Vs

Anna Shobna Pramila

.. Respondent / Petitioner

Prayer: Civil Revision Petition is filed under 115 of Civil Procedure Code to set aside the order dated 09.10.2014 passed in I.A.No.3159 of 2013 in OP No.624 of 2012.

For Petitioner : Mr.M.L.Joseph
for M/s.Chennai Law Associates

For Respondent : Mr.T.Mohan
for M/s.Shaik Mehrunisa

ORDER

This revision arises out of the order dated 29.12.2012 passed by the Principal Family Court, Chennai in I.A.No.3159 of 2013 in FCOP No.624 of 2012.

2. The respondent filed OP No.624 of 2013 before the Family Court, Chennai against the petitioner praying for dissolution of the marriage held on 17.06.1996 and for a direction directing the petitioner herein to pay a sum of Rs.2 crores as permanent alimony. The petitioner was set exparte and an exparte order was passed on 09.11.2012 directing the petitioner to pay a sum of Rs.2 crores as permanent alimuni. Based on the order, the respondent laid an execution petition in EP No.41 of 2013 for attachment and sale of property situated in 907, Pimpernel court, Naperville, Illinois, USA.

3. The petitioner filed I.A.No.3159 of 2013 to condone the delay of 301 days in filing a petition to set aside the exparte order stating that the notice in the OP was served on him when he came to India for visiting the minor child Magen Grace Prakash. Since the other two children were in USA, he could not stay in India till the hearing of OP and he left India. When he came again on 25.11.2013, he was informed that an exparte order was passed against him on 29.12.2012. The petition was resisted by the respondent by filing a detailed counter. The Family Court dismissed the petition. Aggrieved by the order, the present revision is filed.

4. Mr.L.Joseph, learned counsel for the petitioner submitted that the learned Judge has dismissed the application adopting hyper technical approach instead of deciding the application on merits; that the disputes between the petitioner and the respondent pertain to valuable human rights and therefore he should be given opportunity to contest the case. The learned counsel further submitted that the petitioner had no dishonest or improper intention in failing to appear before the court on the date of hearing as he was in USA and he could not come down to India as he was taking care of his two children. So the learned Judge should have adopted more pragmatic and practical approach while considering the application for condonation of delay.

5. Per contra, Mr.Mohan, learned counsel for the respondent submitted that the respondent has served notice on the petitioner on 17.09.2012 stating that the case is posted for hearing on 09.11.2012. He had knowledge about the petition filed by the respondent and therefore the contention of the petitioner that he came to know about the exparte decree only on 25.11.2013 is false. It is further submitted that when the proceeding is pending in the Family Court, Chennai, the petitioner had moved US Court and obtained

orders behind the back of the respondent and moreover he has not shown respect to the courts in India. The learned counsel further submitted that the petitioner has not shown sufficient cause for condonation of inordinate delay of 301 days and the family court has rightly dismissed the application which does not warrant interference by this court.

6. It is not in dispute that the respondent had filed the OP for divorce and also claiming permanent alimony of Rs.2 crores. It is true that the petitioner had received notice on 17.09.2012 and he was aware of the pendency of the case before the family court. It is further stated by the petitioner that at the time when the case was posted for hearing, his two children were in USA and therefore he had to move to take care of them. There is no material to show that the petitioner had adopted dilatory tactics to prolong the litigation and inaction of the petitioner is deliberate.

7. Considering the nature of prayer sought for in the OP and the length of delay, this court is of the opinion that the petitioner should be given opportunity to contest the case. However, considering the inconvenience caused to the respondent, the delay is condoned on payment of cost of Rs.25,000/- to the respondent within a period of

two weeks from the date of receipt of a copy of this order. On such compliance, the family court shall dispose of the original petition, on merits and in accordance with law, within a period of six months thereon.

8. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

27.01.2015

Index:Yes/No
Internet:Yes/No
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To

The Principal Judge,
Family Court,
Chennai.

K.KALYANASUNDARAM,J

rgr

Order in
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