

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD) No.4408 of 2015

P.Shanmugam

... Petitioner

v.

Mohanapriya

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 17.03.2014 passed in I.A.No.28 of 2013 in C.M.A.No.17 of 2009 on the file of the Principal District Judge, Namakkal.

For Petitioner : Mr.P.Rathinavel

For respondent : Mr.R.Ganesh Kumar

O R D E R

Heard Mr.P.Rathinavel, learned counsel appearing for the petitioner and Mr.R.Ganesh Kumar, learned counsel appearing for the respondent.

2. Challenging the fair and final order passed in I.A.No.28 of 2013 in C.M.A.No.17 of 2009 on the file of Principal District Court, Namakkal, the petitioner, who is the husband of the respondent, has filed the above Civil Revision Petition

3. The petitioner filed H.M.O.P. No.11 of 2008 on the file of Sub Court, Rasipuram for divorce for dissolution of marriage. The said Original Petition was contested by the respondent and the Trial Court dismissed the petition on merits.

4. Aggrieved over the same, the petitioner preferred an appeal in C.M.A.No.17 of 2009 on the file of Principal District Court, Namakkal.

5. Since the petitioner failed to appear before the Lower Appellate Court, the Lower Appellate Court dismissed the appeal in C.M.A.No.17 of 2009. Thereafter, the petitioner filed an application to restore the appeal in C.M.A.No.17 of 2009. The application filed by the petitioner to restore the appeal was returned by the Registry of the Principal District Court for compliance. However, the same was not complied with by the petitioner within the time stipulated by the Lower Appellate Court and the papers were not represented. Subsequently, the petitioner filed an application in I.A.No.28 of 2013 to condone the delay of 731 days in representing the papers. In the affidavit filed in support of the application, the petitioner has

stated that he is studying Law in Bangalore Law College and therefore, he could not represent the papers in time. However, the petitioner has not explained how his presence is required for representing the papers before the Lower Appellate Court.

6. The learned counsel appearing for the petitioner submitted that the petitioner is willing to compensate the respondent by paying cost and the petitioner may be permitted to prosecute the appeal on merits.

7. The learned counsel appearing for the respondent submitted that the petitioner has not given any acceptable reason for condoning the delay.

8. Having regard to the submissions made by the learned counsel on either side, I am of the view that in order to give one more opportunity to the petitioner to prosecute the appeal in C.M.A.No.17 of 2009 on merits, in the interest of justice, the delay of 731 days in representing the papers can be condoned, however, on payment of costs.

9. Accordingly, the fair and final order passed in I.A.No.28 of 2013 in C.M.A.No.17 of 2009 are set aside and the application in I.A.No.28 of 2013 stands allowed on condition that the petitioner-husband paying a sum of Rs.20,000/- (Rupees twenty thousand only) to the respondent-wife within a period of two weeks from the date of receipt of a copy of this order. The

Principal District Judge, Namakkal is directed to dispose of the application filed by the petitioner to restore the appeal, within a period of six weeks from the date of receipt of a copy of this order.

With these observations, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

14.12.2015

Index : Yes/No

Rj

To
The Principal District Judge,
Namakkal

M. DURAISWAMY,J.,

Rj

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