

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2015

CORAM

THE HON'BLE MR.JUSTICE S.MANIKUMAR

Crl.R.C. No.1336 of 2012
& M.P.No.1 of 2012

S.Tamil Selvan

.. Petitioner

vs.

R.Latha

.. Respondent

Revision Case filed under Sections 397 and 401 of Cr.P.C against the order passed in Crl.M.P.No.780 of 2012 in M.C.No.33 of 2010 dated 24.09.2012 on the file of the Chief Judicial Magistrate, Erode.

For petitioner : Mr.S.Udayakumar for M/s. Karan & Uday

For respondent : Mr.M.Guruprasad

O R D E R

Being aggrieved by the order dated 24.09.2012 of the learned Chief Judicial Magistrate, Erode imposing a condition of payment of Rs.50,000/- to the respondent/wife, to be paid on or before 10.10.2012, for condoning the delay of 413 days in filing the application to set aside the exparte order of maintenance in M.C.No.33/2010 dated 30.11.2010, this Criminal Revision has been filed.

2. It is the case of the petitioner/husband that he did not receive any summons from the Court and the respondent/wife has played fraud by obtaining exparte order of maintenance with effect from 30.11.2010. The petitioner has also disputed the marriage. According to him, he came to know about the exparte order of maintenance in M.C.No.33/2010 dated 30.11.2010 only after receiving the notice in C.M.P.No.2673/2010 filed by the wife under section 125 (1) (a) of Cr.P.C.

3. Per contra, the wife/respondent has denied the allegation of playing fraud in obtaining the ex parte order. According to her, summons in the main case were sent on seven occasions and that the final summons was returned as undelivered. The court below after considering the averments made in the petition filed under Section 125 of Code of Criminal Procedure, directed maintenance to be paid.

4. Adverting to the above said rival contentions and after perusing the case records, the learned Chief Judicial Magistrate, Erode has found that the first summon was returned with an endorsement "no such address". Fresh summon was issued. Office Note indicated that the notice sent was returned with an endorsement "not claimed". The learned Chief Judicial Magistrate has also perused the postal envelope. Thus, observing that fresh summon dated 22.11.2010 was not claimed by the petitioner/husband, the court below proceeded to set the petitioner as ex parte and after considering the averments made in M.C.No.33/2010 and evidence, passed final order on 30.11.2010, granting maintenance of Rs.20,000/-. A perusal of the order made in M.C.No.33/2010 dated 30.11.2010 on the file of the learned Chief Judicial Magistrate, Erode shows that the following documents have been marked:

- i) Judgment in HMOP No.217/06 dated 3.12.2009
- ii) Xerox copy of FIR dated 10.11.2006
- iii) Xerox copy of marriage invitation of the respondent (in M.C.No.33/2010) and Kavitha
- iv) Xerox copy of a document, showing the proof of Jewellery Finance business conducted by the respondent (in M.C.No.33/2010)

5. C.M.P.No.780 of 2012 has been filed with a delay of 413 days in filing the application seeking to set aside the order directing payment of maintenance. Though the petitioner has alleged fraud played by the wife, in obtaining an exparte order of maintenance on 30.11.2010, for the reasons stated supra, the court below has declined to accept the contentions. Though the court below was also not satisfied with the reasons for condoning the delay, thought it fit to provide an opportunity to the petitioner to contest the case so that the dispute can be resolved effectively on merits. At the time of considering the application for condonation of delay of 413 days in filing the petition to set aside the exparte order of maintenance, the court below, taking note of a fact that the respondent/wife has filed an application for enforcement of the order of maintenance with arrears of Rs.3,60,000/-, deemed it fit to direct the petitioner/husband to deposit a small portion of the arrears and thus directed a sum of Rs.50,000/- to be paid to the respondent/wife on or before 10.10.2012, as a condition precedent for condoning the delay of 413 days. Being aggrieved by the condition imposed, the present Criminal Revision has been filed.

6. When this revision came up for hearing on 30.10.2012, this Court has ordered Notice of Motion returnable in three weeks and granted interim stay on condition that the petitioner shall deposit a sum of Rs.25,000/- to the credit of CrI.M.P.No.780 of 2012 in

M.C.No.33/2010 on the file of learned Chief Judicial Magistrate, Erode, failing which stay would be vacated automatically without further reference to the orders of this Court.

7. On this day, when the matter came up for hearing, the learned counsel for the petitioner submitted that he has complied with the order dated 30.10.2012. Though he has reiterated the very same contentions made before the court below. Considering the fact that an exparte order of maintenance had been granted as early as on 30.11.2010 and the pendency of the petition for enforcement of the order of maintenance, the intention of the court below to provide the petitioner a reasonable opportunity so that the dispute is resolved effectively on merits, with a direction to pay limited payment of Rs.50,000/- to the respondent/wife, as against a huge arrears of Rs.3,60,000/-, cannot be said to be manifestly illegal, warranting interference.

8. The Criminal Revision is disposed of with direction that the petitioner shall deposit the balance amount of Rs.25,000/- within a period of ten days from today, failing which the application filed for condonation be dismissed without any further reference to the orders of the court. A sum of Rs.25,000/-, already deposited to the credit of CrI.M.P.No.780 of 2012 in M.C.No.33/2010, shall be withdrawn by the respondent/wife. Further, a sum of Rs.25,000/- which is now ordered to be deposited, is also permitted to be withdrawn by the respondent/wife. The connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

ajr/ars

To

1. The Chief Judicial Magistrate, Erode
2. The Public Prosecutor, High Court, Chennai.

1 cc to Mr.M. Guruprasad, Advocate, Sr. 11769

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RSY (CO)
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