



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23 - 02 - 2015

CORAM:

WEB COPY

THE HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

CRP (NPD) (MD) No. 140 of 2015

Jayanthi Mary

.. Petitioner

Vs.

Poulose

.. Respondent

PRAYER: Petition filed under Section 115 of the Code of Civil Procedure to set aside the order dated 03.08.2012 passed by the District Judge, Kanyakumari, in I.A. No. 42 of 2011 in I.D.O.P. No. 313 of 2009.

For Petitioner : Mr. K. Sreekumaran Nair

For Respondent : Ms. J. Anandavalli

ORDER

Challenging the order dated 03.08.2012 passed by the learned District Judge, Kanyakumari, in I.A. No. 42 of 2011 in I.D.O.P. No. 313 of 2009, wherein and by which the application filed by the petitioner under Section 5 of the Limitation Act and Section 151 CPC praying to condone the delay of 72 days in filing petition to set aside the ex parte decree dated 01.10.2010, was dismissed, the present Civil Revision Petition has been preferred by the wife / respondent in I.D.O.P.

2. From the materials available on record, it is seen that the revision petitioner got married with the respondent on 06.02.2002 according to the Christian rites and out of the wedlock, a female child was born to them on 15.9.2003. Subsequently, due to the difference of opinion arose between them, the husband filed I.D.O.P. No. 313 of 2009 before the Court of District and Sessions Judge, Kanyakumari at Nagercoil and due to non-appearance of the wife, the same was decreed ex parte on 01.10.2010.

3. As against the said ex parte decree, the wife filed an application in I.A. No. 42 of 2011 to condone the delay of 72 days in filing a petition to set aside the ex parte decree dated 01.10.2010. Before the learned Judge, it was contended by the petitioner that on the date when the I.D.O.P. was posted, her daughter was admitted in the Medical College Hospital at Thiruvananthapuram and hence, she was unable to attend the Court. The learned Judge, on consideration of the materials placed thereon, dismissed the Application holding that the petitioner had not produced any medical certificate to show that her daughter was admitted in hospital due to illness. The learned Judge further held that the petitioner has not shown sufficient cause for the

delay in filing petition to set aside the ex parte decree. Feeling aggrieved, the petitioner has come up with the present Civil Revision Petition.

4. The only point to be decided before this Court is whether the order of the Court below in refusing to condone the delay of 72 days in filing petition to set aside the ex parte decree suffers from any infirmity or irregularity.

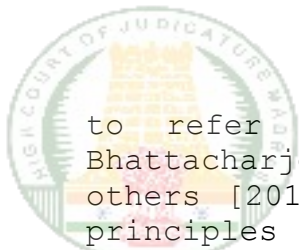
5. Learned counsel appearing for the revision petitioner / respondent urges before this Court that the trial Court has failed to exercise its discretion in favour of the revision petitioner and in fact, it should have condoned the delay in filing an application to set aside the ex parte decree in order to give the petitioner / respondent an opportunity to have her claim decided on merits. He further contended that a liberal approach is to be adopted by a Court of Law in dealing with the application for condonation of delay filed under Section 5 of the Limitation Act and, therefore, prays for allowing this Civil Revision Petition in the interest of justice.

6. In response, the learned counsel for the husband / respondent herein submitted that the trial Court has rightly dismissed the Interlocutory Application filed by the petitioner by assigning cogent and convincing reasons and therefore, the same need not be interfered with by this Court sitting in revision.

7. Generally, Courts are liberal in condoning the delay on consideration that dispute between the parties shall be decided on its own merits rather than general technicalities, more particularly, if such technicality does not defeat the right of any party. It is axiomatic that condonation of delay is a matter of discretion of the Court. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory.

8. Law is settled that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such a delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court and the Hon'ble Apex Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the

9. At this juncture, it would not be out of place for this Court



to refer to the judgment of the Hon'ble Supreme Court in Esha Bhattacharjee vs. Managing Committee of Raghunathapur Nafar Academy and others [2013 (12 ) SCC 649] wherein Their Lordships have enlisted broad principles that are to be followed while condoning the delay. While recommending a liberal, pragmatic, justice oriented, non-pedantic approach in matters of condonation of delay, the Hon'ble Apex Court, in paragraph 21.9, has observed as follows:-

"The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach."

10. In case of delay condonation, normally, the superior Court should not disturb the finding of its subordinate Court, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse.

11. In the instant case, a perusal of the materials would show that the petitioner has not produced any valid document to substantiate her contention that on the date of passing of the ex parte decree, ie., on 01.10.2010, her daughter was admitted in the hospital and she was looking after her. Further, though the petitioner relies on Ex. X.1, xerox copy of the Students Attendance Register of II Standard, ABC Matric Higher Secondary School at Kollencode, where her daughter is studying, to show that her daughter did not attend school on that day, no evidence has been produced that her daughter was admitted in hospital and she accompanied her in hospital nor has she chosen to examine the hospital authority. It is also pertinent to note that the absence of her daughter to the School on 01.10.2010 was due to her illness and hospitalization has not been proved. Moreover, it is also seen from papers available before this Court that pursuant to the dissolution of marriage by virtue of the ex parte decree dated 01.10.2010, the husband / respondent herein married one Vijila Mary on 30.4.2011.

12. In view of the foregoing discussion and applying the principle enunciated by the Hon'ble Supreme Court in the case cited supra, this Court is of the opinion that in the absence of sufficient and convincing reasons, the Court should not excuse the delay. Hence, the delay caused in filing petition to set aside the ex parte decree cannot be condoned. The Court below was perfectly correct in dismissing the application and the same does not warrant any interference.

In view of the above, the Civil Revision Petition fails and the same stands dismissed confirming the order of the learned District Judge, Kanyakumari, passed in I.A. No. 42 of 2011 in I.D.O.P. No. 313 of 2009. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (T&P)

Sub Assistant Registrar



To

The District Judge,

Kanyakumari at Nagercoil.

+1cc to Mr.J.Anandhavalli, Advocate in SR.No.8668

+1cc to Mr.K.Sreekumaran Nair, Advocate in SR.No.8048

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Order in

C.R.P. (NPD) (MD) No. 140 of 2015