



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11/3/2015

C O R A M

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THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.NPD (MD) No.2364 of 2014

Sivagami ... Petitioner

Vs

T. Chockalingam ... Respondent

Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order passed in I.A.No.7 of 2014 in C.M.A.SR.No.505 of 2014 dated 11/10/2014 on the file of the Principal District Court, Pudukottai.

For petitioner ... Ms.S.Pushpalatha

For respondent ... Mr.J.Anandkumar

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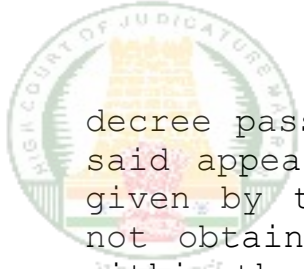
O R D E R

A wife in a matrimonial dispute has preferred the above revision challenging the order refusing to condone the delay of 986 days in filing a Civil Miscellaneous Appeal.

2. The respondent, who is the husband had filed H.M.O.P.No.110 of 2008 on the file of the Sub-Court, Pudukottai.

3. The petitioner herein also had filed counter and contested the matter. However, during the trial, the petitioner herein, who was the respondent therein had expressed no objection in granting a decree for divorce. Though in the counter to the H.M.O.P., the petitioner herein had vehemently denied all the averments. During the course of the trial, she had conceded that she is not willing to live with the respondent/husband. As both the petitioner as well as the respondent had uniformly refused to live with each other, the Sub-Court, Pudukottai had granted a decree of divorce dissolving the marriage between the parties solemnised on 31/1/1994.

4. The respondent herein, who is the husband had married again, after waiting for a statutory period, though a consent decree of divorce was passed. While so, the petitioner herein, who is the wife has preferred C.M.A.SR No.505 of 2014 on the file of the Principal District Judge, Pudukottai, challenging the



decree passed by the Sub-Court in H.M.O.P.No.110 of 2008. But the said appeal was filed with a delay of 986 days. The only reason given by the petitioner is that since her erstwhile counsel had not obtained the copies of the judgments, she could not file it within the time stipulated for filing the appeal.

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5. This was resisted by the respondent contending that the petitioner is a Government employee employed in the Block Development office. The decree of divorce was granted on 29/6/2011. Thereafter, the respondent had married another woman and begot children. Now, after three years, the wife has come up with such an application without giving any just and sufficient reasons for the delay. The only reason given by the petitioner is that her erstwhile counsel did not obtain the copies of the order which is unacceptable. When the decree itself is passed by consent, first of all, appeal is not maintainable. It is not her case that the decree was obtained by fraud or coercion. The wife/petitioner had conceded before the Court during the course of trial for divorce and no elaborate trial was conducted. Therefore, on a second thought, the appeal is filed with an inordinate delay of 986 days with unacceptable reasons. No doubt, in deciding the delay petitions, a liberal and justice oriented approach should be shown. However, in this case, it is not an ex parte decree, but a consent decree. Having consented for the divorce, the petitioner cannot be allowed to take advantage of her own wrong that too after a lapse of three years, when the right granted under the decree has been crystalised in favour of the respondent.

6. In view of the above finding, the order of dismissal passed by the learned District Judge, Pudukottai is correct and hence no interference is warranted and the same is confirmed.

7. In the result, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

The Principal District Judge, Pudukottai.

+One cc to Mr.K.Balasundharam, Advocate, SR.No.11778

+One cc to Mr.J.Anandkumar, Advocate, SR.No.11609

mvs

RL/4 c- 24/3/2015

C.R.P.PD (MD) No.2364 of 2014