

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.136 of 2011

ORDER:

This Revision is filed challenging the order dt.06-09-2010 in I.A.No.2160 of 2009 in O.P.No.1363 of 2008 of the Judge, Family Court, Ranga Reddy District at L.B. Nagar, Hyderabad.

2. The petitioner herein was married to respondent. The respondent filed O.P. against petitioner for dissolution of the said marriage. An *ex parte* decree was passed on 08-04-2009 in favour of respondent.
3. In August, 2009, the petitioner filed I.A.No.2160 of 2009 under Section 5 of the Limitation Act, 1963 to condone the delay of 140 days in filing application under Order IX Rule 13 C.P.C. and also another application under Order IX Rule 13 C.P.C.
4. In the affidavit filed in support of the said application, she stated that she received a letter through courier on 04-03-2009 from one Sri N.Bhujanga Rao, Advocate, Hyderabad containing summons issued by the Family Court but the copy of the O.P. was not enclosed thereto. She stated that she wrote a letter dt.16-03-2009 to the Family Court for furnishing a copy of the same. She stated that since the next date of posting was 25-03-2009, in such short time she was not able to attend the Court at Hyderabad. She stated that she was living with her old parents and both are aged about 72 and 75 years; that they are unable to move outside; and it was not practically possible for her to

attend the Court from her residence at Ajmer, Rajasthan State to the Court at Hyderabad which is more than 2,000 K.M away, that too when she has no male member of her family to accompany her. She claimed that her in-laws were residing at Delhi and she had been in regular touch with them and even they did not reveal to her about the case. She claimed that she had filed a petition under Section 9 of the Hindu Marriage Act, 1955 before the Family Court, Ajmer and the said Court had issued summons to respondent but he did not receive the summons deliberately. She further stated that the O.P. could be filed at the place where the marriage was solemnized, or where the respondent resided at the time of presentation of the O.P., or parties to the marriage last resided together, and so the Family Court at Hyderabad therefore had no jurisdiction to entertain the O.P. She stated that through the friend of her by name Harish Kumar Garg, she came to know that the case was disposed of on 08-04-2009 itself and contended that since her inability to attend the Court on that day was on account of the above facts, the delay in seeking to set aside the *ex parte* decree should be condoned and the *ex parte* decree be set aside.

5. Counter affidavit was filed by respondent opposing the same. He contended that she had adequate notice to appear before the Family Court since she received the notice from the Court on 04-03-2009, that it was posted for her appearance on 25-03-2009 and she had showed disrespect to the Court by writing a letter to the Court by asking the Court to send the copy of the O.P.
6. By order dt.06-09-2010, the Court below dismissed I.A.No.2160 of 2009. It observed that the petitioner was aware of the date of

hearing of the O.P. since she received the notice of appearance on 25-03-2009, but she has not requested for any time and had also not stated why she was not in a position to appear.

7. This observation of the Court below is incorrect having regard to the contents of the affidavit filed by petitioner in support of I.A.No.2160 of 2009 wherein she mentioned about her aged parents and her inability to travel to Hyderabad which is 2000 K.Ms. away from Ajmer without male assistance at a short notice.
8. Since the Court below has refused even to refer to the contentions of the petitioner about the reason why she was unable to attend the Court on 25-03-2009, its further findings that the petitioner should have appeared before the Court on that day to defend her case, and should have engaged an Advocate and sent a vakalat along with the letter addressed by her to the Court, appear to be clearly perverse.
9. When proceedings for dissolution of marriage are initiated, the Courts are to consider the situation of the parties and their difficulties in contesting the proceedings in far away Courts more sympathetically. It is not open to the Court below to observe that even if she is at Ajmer, once she was made to know the date of hearing, she is expected to make her own efforts and the distance cannot be a ground.
10. In **Parimal Vs. Veena alias Bharti** the Court has observed that an *ex parte* decree against a defendant has to be set aside if the party satisfies the Court that summons had not been duly served or he was prevented by sufficient cause from appearing when the suit was called for hearing. It observed that the facts and

circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion judiciously.

11. From the pleadings of the petitioner itself it is clear that she had shown sufficient cause for not appearing before the Court below on 25-03-2009. Therefore the Court below was not justified in dismissing I.A.No.2160 of 2009.
12. Therefore, the Civil Revision Petition is allowed and the order dt.06-09-2010 in I.A.No.2160 of 2009 in O.P.No.1363 of 2008 of the Judge, Family Court, Ranga Reddy District at L.B. Nagar, Hyderabad is set aside and the said I.A. is allowed. Consequently, the I.A. under Order IX Rule 13 C.P.C. shall stand allowed and the O.P. is restored to the file of the said Court. No costs.
13. As a sequel, miscellaneous petitions pending if any, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 26-10-2015

Vsv