

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(NPD)No.4645 of 2011

L.Ravichandran

.. Petitioner

Vs

R.Premila

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order passed by the learned Principal Sub Court, Tindivanam made in I.A.No.73 of 2010 in H.M.O.P.No.64 of 2005 dated 21.01.2011 filed under Section 5 of the Limitation Act seeking for the condoning 20 days of delay in filing the application for the restoration of the H.M.O.P.No.64 of 2005.

For Petitioner : Mr.P.Paramasiva Doss

For Respondent : Mr.R.Muralidharan

ORDER

The petitioner / husband has filed HMOP.No.64 of 2005 before the learned Principal Subordinate Judge, Tindivanam against the respondent / wife on the ground of adultery and also for divorce. The said HMOP was dismissed for default on 21.01.2011 on the ground that the petitioner was not appeared before the said Court. For restoring the said application, the petitioner has filed I.A.No.73 of 2010 for condoning the delay of 20 days in filing the set aside application in HMOP.No.64 of 2005.

2.The case of the petitioner is that the petitioner married the respondent on 20.01.2002 as per the Hindu Rites and Customs. But after marriage, the petitioner alleged the respondent has not acted as a dutiful wife instead of the respondent was acting in an indifferent manner and she was causing a huge mental agony and pain to the petitioner by her actions. The petitioner's efforts to reconciliation resulted in vain and as the marriage life of the petitioner was not conducive and hence without any other alternative, the petitioner has constrained to filed the above HMOP.No.64 of 2005 before the

Principal Subordinate Court, Tindivanam seeking for the dissolution of the marriage solemnized on 20.01.2002.

3. Due to his financial constraints, the petitioner could not concentrate in his work and hence, he was changed his counsels that he was unable to pay the fees to the counsels. Therefore, this petitioner was compelled to seek the legal assistance from the Free Legal Aid Authority. Accordingly, the Legal Aid Authority has appointed the counsel to appear before the court in the said case.

4. The petitioner was subjected to serious health problem of Hepatitis and Fever and hence he has taken treatment with granny treatment with local physicians in his native village and hence he was not able to appear before the Court below on 22.04.2010. Hence, the said HMOP.No.64 of 2005 is dismissed for default on the said date. Hence, the petitioner was filed restoration petition along with condonation of delay of 20 days in filing the application for restoring the HMOP.No.64 of 2005 in I.A.No.73 of 2010.

5. For the said petition, the respondent / wife was filed counter and strengthened to dismiss the condone delay petition.

6.Considering both side arguments, the learned Principal Subordinate Judge was pleaded to dismiss the application on 21.01.2011 on the ground that though the petitioner was suffered from severe Jaundice. But to prove the said disease, he has not produced any medical certificate or evidence. Apart from this, he has changed his counsel for more than 5 occasions and finally Legal Aid counsel was appointed to him and there was compromise talks between the petitioner and the respondent for taking time of 6 months and they were not accepted the compromise and agreed to leave with the respondent. Therefore, the learned Judge states that for the delay of 20 days, he has given false reasons without any evidence or documents to prove his illness and dismissed the above application.

7.Heard Mr.P.Paramasiva Doss, learned counsel appearing for the petitioner and Mr.R.Muralidharan, learned counsel appearing for the respondent.

8.It is unfortunate to seen this kind of orders passed by the learned Principal Subordinate Judge, Tindivanam. The learned Judge on total non-application of mind, lack of knowledge of natural justice, he has dismissed the application for condoning the delay of 20 days.

This kind of orders will definitely created suspect on the judiciary by the public and the litigants. Since a person, who is not appeared before the Court and not filed the application within 20 days, it is not a Himalayan delay and this act of the petitioner is not against the natural justice and law?

9.The Hon'ble Apex Court and this Court in many cases very categorically held that while dealing the condonation petition, the Courts below ought to have apply their mind in a proper manner and pass the orders in the interest of justice. But, Thiru.Stalin, the then Principal Subordinate Judge, Tindivanam has totally lack of his mind and knowledge of law and completely forgetting the minimum mind of natural justice and social welfare of the society and simply dismissed the application, which was filed by the petitioner for a minimum delay of 20 days in filing the restoration application.

10.This Court highly expected from the judicial officers to deal the applications by applying their mind in a proper manner, by giving the natural justice and fair opportunities to the parties with the knowledge of law. But, the case on hand, the learned Judge has not followed any of the orders of the Hon'ble Apex Court and this Court and he has not giving valid reason, which was filed minimum delay of

20 days. The learned Judge, if he applied his mind in a proper manner by following the natural justice by way of giving fair opportunity to the petitioner to contest his case in a proper manner, the learned Judge would have allowed this application instead of that he simply dismissed the application by stating that the petitioner has not given any reason or not produced any documents to prove his illness for the delay of 20 days.

11.The Hon'ble Apex Court and this Court oftenly directed the Courts below while dealing the condone delay application they must be liberal approach, which cannot be shown in the case on hand then why the learned Judge has dismissed the application. Because of the dismissing the said application, this civil revision petition has been filed challenging the dismissal order in I.A.No.73 of 2010 dated 21.01.2011 which is pending from the year 2011 i.e. for more than 5 years pending before this Court. Therefore, the order of the learned Judge in dismissing the application for warrant of interference and the same should be set aside without any hesitation.

12.Though on the judicial point, this Court is of the view that the act of the petitioner should not be went away from the judicial

interest and hence for the interest of justice it should be compensated to the respondent / wife and hence the petitioner ought to have pay a sum of Rs.1,000/- as the cost for allowing this civil revision petition.

13. Accordingly, I am inclined to pass the following orders:

(a) The civil revision petition is allowed on condition that the petitioner should pay a sum of Rs.1,000/- to the respondent within a period of four weeks from the date of receipt of a copy of this order and the order in I.A.No.73 of 2010 in HMOP.No.64 of 2005 dated 21.01.2011 passed by the learned Subordinate Judge, Tindivanam is hereby set aside and the application in I.A.No.73 of 2010 is hereby allowed.

(b) The learned Principal Subordinate Judge, Tindivanam is hereby directed to

number the restoration application and dispose the same within a period of one month from the date of receipt of a copy of this order by giving notice to both parties.

(c)On passing of the order in the restoration application, if it is allowed, the learned Principal Subordinate Judge, Tindivanam is hereby directed to dispose the HMOP.No.64 of 2005 within a period of two months by giving fair opportunity to both parties on day today basis and both the parties have no right to get any adjournment except any serious circumstances and this Court directed both the parties to give their fullest cooperation for the early disposal of the said HMOP within the above said period.

14.Therefore, the Civil Revision Petition is allowed with the above terms.

15.07.2016

VS

Note: Issue order copy on 02.09.2016.

Index: Yes/No

Internet: Yes/No

To

The Principal Subordinate Court,
Tindivanam.

M.V.MURALIDARAN.J.,

VS

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