

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-11-2016

CORAM

THE HONOURABLE THIRU JUSTICE **M. DURAISWAMY**

C.R.P.(NPD)No.974 of 2016

and

CMP No.5505 of 2016

V. Shanmugasundaram

... Petitioner

vs

B. Sowmya

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 02.11.2015 in I.A.No.329 of 2015 in I.A.No.975 of 2010 in HMOP No.135 of 2009 on the file of Family Court, Erode.

For Petitioner : Mr.P.T. Ramadevi

ORDER

Challenging the fair and final decree passed in I.A.No.329 of 2015 in I.A.No.975 of 2010 in H.M.O.P.No.135 of 2009 on the file of Family Court, Erode, the petitioner, who is the husband of the respondent, has filed the above Civil Revision petition.

2. The respondent/wife filed the Original Petition in H.M.O.P No.135 of 2009 for divorce. Since the revision petitioner did not appear before the Family Court, he was set ex-parte and an ex-parte decree was

passed on 18.09.2010. Thereafter, the revision petitioner has filed an application in I.A.No.975 of 2010 to set aside the exparte-decree. Subsequently, the application in I.A.No.975 of 2010 was dismissed for default on 31.10.2011 in view of the endorsement made by the counsel for the revision petitioner.

3. Thereafter, the revision petitioner has filed an application in I.A.No.329 of 2015 to condone the delay of 1181 days in filing the petition to restore the application in I.A.No.975 of 2010, which was dismissed for default on 31.10.2011. In the affidavit, filed in support of the petition, the petitioner has stated that he was suffering from ailment and was taking treatment in Kerala and therefore, he was not in a position to contact his counsel, hence there is a delay of 1181 days in filing the petition to restore the application in I.A.No.975 of 2010.

4. Except the averments stated in the affidavit, the petitioner has not produced any evidence to substantiate the said averments. The affidavit filed by the petitioner is very bald and bereft of materials. The averments stated in the affidavit were disputed by the respondent in her counter.

5. The Family Court, taking into consideration the case of both parties, declined to condone the delay for the reason that the petitioner has not explained the reasons for the delay in a proper manner.

6. It is a settled position that unless, the party, seeking for condonation of delay, gives sufficient cause for the delay, the delay should not be condoned. In the case on hand, the petitioner failed to explain the reasons for the delay in a proper manner. That apart, when the delay is inordinate, the petitioner should have given sufficient reasons for the delay in filing the application. In the absence of sufficient reason, the Family Court has rightly dismissed the petition. I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and the same is dismissed. No costs. Consequently, connected CMP is closed.

22-11-2016

sr

Index:no
website:yes

To
The Family Court, Erode

M. DURAISWAMY,J.,

sr

CRP(NPD)No.974 of 2016

22-11-2016