

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.4143 of 2013
and M.P.Nos.1 of 2013 and 2 of 2013

S. Nirmala

... Petitioner

vs

E. Shanmugam

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 19.4.2013 in I.A.No.1342 of 2012 in I.A.No.1747 of 2011 in H.M.O.P.No.1585 of 2010 on the file of II Additional Family Court, Chennai.

For Petitioner : M/s K.N. Nataraj

For respondent : Mr.N.P. Kumar

ORDER

Challenging the fair and final decree passed in I.A.No.1342 of 2012 in I.A.No.1747 of 2011 in H.M.O.P.No.1585 of 2010 on the file of II Additional Family Court, Chennai, the revision petitioner, who is the wife of the respondent, has filed the above Civil Revision Petition.

2. The respondent filed a Original Petition in H.M.O.P.No.1585 of 2010 for dissolution of marriage. Since the petitioner remained absent, an ex-parte decree was passed on 12.11.2010. Subsequently, the petitioner filed an application in I.A.No.1747 of 2011 to condone the delay of 168 days in filing the petition to set aside the ex-parte decree. The Family Court allowed the application, on payment of cost of Rs.500/- to be paid by the revision petitioner on or before 17.4.2012. However, the revision petitioner failed to comply with the conditional order and filed an application in I.A.No.1342 of 2012 to condone the delay of four days (4 days) in paying the cost of Rs.500/-.

3. In the affidavit, filed in support of the petition, the petitioner has stated that she failed to comply with the conditional order inadvertently for the reason that she noted the hearing date as 21.4.2012. The cost was paid on 20.04.2012.

4. The respondent filed his counter disputing the averments stated in the affidavit, filed in support of the petition.

5. The Family Court dismissed the petition, finding that though the petitioner paid the cost of Rs.500/- on 20.04.2012, since she has not complied with the conditional order within the stipulated time, the delay cannot be condoned.

6. The petition has been filed under Sec.148 of the Civil Procedure Code. Under the provisions of Sec.148 of the Civil Procedure Code, the Court has got ample powers to extend the time for complying with the conditional order. Further, the petitioner has satisfactorily explained the reasons for not depositing the amount on or before 17.04.2012 and has shown her *bona fide* by depositing the amount on 20.04.2012. The reasoning given by the petitioner can be accepted for condoning the delay of four days in paying the cost of Rs.500/-.

7. The Family Court erroneously rejected the petition, filed by the petitioner. In these circumstances, in the interest of justice, the petitioner should be given an opportunity to contest the Original Petition, on merits. Therefore, the fair and decreetal order dated 19.4.2013 passed in

I.A.No.1342 of 2012 in I.A.No.1747 of 2011 in H.M.O.P.No.1585 of 2010 are set aside. The application in I.A.No.1342 of 2012 stands allowed and the Civil Revision Petition stands allowed. No costs. Consequently, connected MPs are closed.

8. Since the Original Petition in H.M.O.P.No.1585 of 2010 is pending from the year 2010, I direct the II Additional Judge, Family Court, Chennai to dispose of the Original Petition in H.M.O.P.No.1585 of 2010, on merits and in accordance with law, within in a period of three months from the date of receipt of copy of this order.

19-01-2016

Index:no
website:yes

To

The II Additional Family Court, Chennai

M. DURAISWAMY,J.,

Sr

CRP(PD)No.4143 of 2013

19-01-2016